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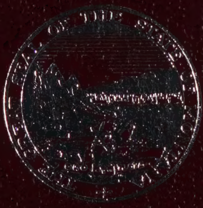

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Part Cross-References

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General powers municipality, 7-1-4124.

7-1-101. Self-government powers. As provided by Article XI, section 6, of the Montana constitution, a local government unit with self-government powers may exercise any power not prohibited by the constitution, law, or charter. These powers include but are not limited to the powers granted to general power governments.

History: En. 47A-7-101 by Sec. 1, Ch. 345, L. 1975; R.C.M. 1947, 47A-7-101.

Cross-References

Powers of general powers counties, 7-1-2103.

Powers of general powers municipalities, 7-1-4124.

Self-government consolidated units of local government, 7-5-201.

Operational status of self-government city-county consolidated local governments, 7-5-201.

7-1-102. Authorization for self-government services and functions. A local government with self-government powers may provide any services or perform any functions not expressly prohibited by the Montana constitution, state law, or its charter. These services and functions include but are not limited to those services and functions which general power government units are authorized to provide or perform.

History: En. 47A-7-102 by Sec. 1, Ch. 345, L. 1975; R.C.M. 1947, 47A-7-102.

7-1-103. General power government limitations not applicable. A local government unit with self-government powers which elects to provide a service or perform a function that may also be provided or performed by a general power government unit is not subject to any limitation in the provision of that service or performance of that function except such limitations as are contained in its charter or in state law specifically applicable to self-government units.

History: En. 47A-7-103 by Sec. 1, Ch. 345, L. 1975; R.C.M. 1947, 47A-7-103.

Cross-References

General government powers, Art. XI, sec. 4, Mont. Const.

7-1-104. Legislative power vested in legislative bodies. The powers of a self-government unit, unless otherwise specifically provided, are vested in the local government legislative body and may be exercised only by ordinance or resolution.

History: En. 47A-7-104 by Sec. 1, Ch. 345, L. 1975; R.C.M. 1947, 47A-7-104.

Cross-References

Local government ordinances and resolutions, Title 7, ch. 5, part 1.

7-1-105. State law applicable until superseded. All state statutes shall be applicable to self-government local units until superseded by ordinance or resolution in the manner provided in chapter 5, part 1 and subject to the limitations provided in this part.

History: En. 47A-7-105 by Sec. 1, Ch. 345, L. 1975; R.C.M. 1947, 47A-7-105.

7-1-106. Construction of self-government powers. The powers and authority of a local government unit with self-government powers shall be liberally construed. Every reasonable doubt as to the existence of a local government power or authority shall be resolved in favor of the existence of that power or authority.

History: En. 47A-7-106 by Sec. 1, Ch. 345, L. 1975; R.C.M. 1947, 47A-7-106.

Cross-References

Powers to be liberally construed, Art. XI, sec. 4, Mont. Const.

7-1-107 through 7-1-110 reserved.

7-1-111. Powers denied. A local government unit with self-government powers is prohibited from exercising the following:

(1) any power that applies to or affects any private or civil relationship, except as an incident to the exercise of an independent self-government power;

(2) any power that applies to or affects the provisions of 7-33-4128 or Title 39 (labor, collective bargaining for public employees, unemployment compensation, or workers' compensation), except that subject to those provisions, it may exercise any power of a public employer with regard to its employees;

(3) any power that applies to or affects the public school system, except that a local unit may impose an assessment reasonably related to the cost of any service or special benefit provided by the unit and shall exercise any power that it is required by law to exercise regarding the public school system;

(4) any power that prohibits the grant or denial of a certificate of public convenience and necessity;

(5) any power that establishes a rate or price otherwise determined by a state agency;

(6) any power that applies to or affects any determination of the department of environmental quality with regard to any mining plan, permit, or contract;

(7) any power that applies to or affects any determination by the department of environmental quality with regard to a certificate of environmental compatibility and public need;

(8) any power that defines as an offense conduct made criminal by state statute, that defines an offense as a felony, or that fixes the penalty or sentence for a misdemeanor in excess of a fine of $500, 6 months' imprisonment, or both, except as specifically authorized by statute;

(9) any power that applies to or affects the right to keep or bear arms, except that a local government has the power to regulate the carrying of concealed weapons;

(10) any power that applies to or affects a public employee's pension or retirement rights as established by state law, except that a local government may establish additional pension or retirement systems;

(11) any power that applies to or affects the standards of professional or occupational competence established pursuant to Title 37 (professions and occupations) as prerequisites to the carrying on of a profession or occupation;

(12) any power that applies to or affects Title 75, chapter 7, part 1 (streambeds), or Title 87 (fish and wildlife).

History: En. 47A-7-201 by Sec. 1, Ch. 345, L. 1975; R.C.M. 1947, 47A-7-201; amd. Sec. 3, Ch. 375, L. 1983; amd. Sec. 22, Ch. 418, L. 1995.

Compiler's Comments

1995 Amendment: Chapter 418 in (6) substituted "department of environmental quality" for "department of state lands"; in (7) substituted "department of environmental quality" for "department of natural resources and conservation"; and made minor changes in style. Amendment effective July 1, 1995.

Cross-References

Self-government powers, Art. XI, sec. 6, Mont. Const.

Public employee pensions, Title 19.

School finance, Title 20, ch. 9.

Montana criminal code, Title 45.

Concealed weapons — offense, 45-8-315 through 45-8-317.

Traffic offenses — local powers, 61-8-103.

Public utilities and carriers — Public Service Commission — rates and charges, Title 69.

Motor carriers — certification of public convenience and necessity, Title 69, ch. 12, part 2.

Certification of environmental capability and public need — major facility siting, 75-20-201.

7-1-112. Powers requiring delegation. A local government with self-government powers is prohibited the exercise of the following powers unless the power is specifically delegated by law:

(1) the power to authorize a tax on income or the sale of goods or services, except that this section shall not be construed to limit the authority of a local government to levy any other tax or establish the rate of any other tax;

(2) the power to regulate private activity beyond its geographic limits;

(3) the power to impose a duty on another unit of local government, except that nothing in this limitation shall affect the right of a self-government unit to enter into and enforce an agreement on interlocal cooperation;

(4) the power to exercise any judicial function, except as an incident to the exercise of an independent self-government administrative power;

(5) the power to regulate any form of gambling, lotteries, or gift enterprises.

History: En. 47A-7-202 by Sec. 1, Ch. 345, L. 1975; R.C.M. 1947, 47A-7-202.

Cross-References

Municipal Courts, Title 3, ch. 6.

Justices' Courts, Title 3, ch. 10.

City Courts, Title 3, ch. 11.

Local government taxation — generally, Title 7, ch. 6, part 25 (counties); Title 7, ch. 6, part 44 (municipalities).

Resort community tax, 7-6-4462.

Interlocal cooperation agreements, Title 7, ch. 11.

Gambling, Title 23, ch. 5.

Extrajurisdictional planning and zoning permitted, 76-1-505.

7-1-113. Consistency with state regulation required. (1) A local government with self-government powers is prohibited the exercise of any power in a manner inconsistent with state law or administrative regulation in any area affirmatively subjected by law to state regulation or control.

(2) The exercise of a power is inconsistent with state law or regulation if it establishes standards or requirements which are lower or less stringent than those imposed by state law or regulation.

(3) An area is affirmatively subjected to state control if a state agency or officer is directed to establish administrative rules governing the matter or if

enforcement of standards or requirements established by statute is vested in a state officer or agency.

History: **En. 47A-7-203 by Sec. 1, Ch. 345, L. 1975; R.C.M. 1947, 47A-7-203.**

7-1-114. Mandatory provisions. (1) A local government with self-government powers is subject to the following provisions:

(a) All state laws providing for the incorporation or disincorporation of cities and towns; for the annexation, disannexation, or exclusion of territory from a city or town; for the creation, abandonment, or boundary alteration of counties; and for city-county consolidation;

(b) Sections 7-3-104 through 7-3-106, 7-3-111 through 7-3-114, and 7-3-1101 through 7-3-1105;

(c) All laws establishing legislative procedures or requirements for units of local government;

(d) All laws regulating the election of local officials;

(e) All laws which require or regulate planning or zoning;

(f) Any law directing or requiring a local government or any officer or employee of a local government to carry out any function or provide any service;

(g) Any law regulating the budget, finance, or borrowing procedures and powers of local governments, except that the mill levy limits established by state law shall not apply;

(h) Title 70, chapters 30 and 31.

(2) These provisions are a prohibition on the self-government unit acting other than as provided.

History: **En. 47A-7-204 by Sec. 1, Ch. 345, L. 1975; R.C.M. 1947, 47A-7-204.**

Cross-References

Planning and zoning, Title 76, ch. 2.

Part 2

Boards

7-1-201. Boards. (1) A board of county commissioners may by resolution establish the administrative boards, districts, or commissions allowed by law or required by law to be established pursuant to 7-1-202, 7-1-203, and this section and listed in 7-1-202. The resolution creating an administrative board, district, or commission must specify:

(a) the number of board, district, or commission members;

(b) the terms of the members;

(c) whether members are entitled to mileage, per diem, expenses, and salary; and

(d) any special qualifications for membership in addition to those established by law.

(2) (a) An administrative board, district, or commission may be assigned responsibility for a department or service district.

(b) An administrative board, district, or commission may:

(i) exercise administrative powers as granted by resolution, except that it may not pledge the credit of the county or impose a tax unless specifically authorized by state law;

(ii) administer programs, establish policy, and adopt administrative and procedural rules.

(c) The resolution creating an administrative board, district, or commission must grant the board, district, or commission all powers necessary and proper to the establishment, operation, improvement, maintenance, and administration of the department or district.

(d) If authorized by resolution, an administrative board, district, or commission may employ personnel to assist in its functions.

(3) Administrative boards, districts, and commissions may be made elective.

(4) Administrative boards, districts, and commissions may not sue or be sued independently of the local government unless authorized by state law.

(5) Members must be appointed by the county commissioners. The county commissioners shall post prospective membership vacancies at least 1 month prior to filling the vacancy.

(6) The county commissioners shall maintain a register of appointments, including:

(a) the name of the board, district, or commission;

(b) the date of appointment and confirmation, if any is required;

(c) the length of term;

(d) the name and term of the presiding officer and other officers of each administrative board, district, or commission; and

(e) the date, time, and place of regularly scheduled meetings.

(7) Terms of all members, except elected members, may not exceed 4 years. Unless otherwise provided by resolution, members shall serve terms beginning on July 1 and shall serve at the pleasure of the county commissioners.

(8) An administrative board, district, or commission must consist of a minimum of 3 members and must have an odd number of members.

(9) The resolution creating an administrative board, district, or commission may provide for voting or nonvoting ex officio members.

(10) Two or more local governments may provide for joint boards, districts, or commissions to be established by interlocal agreements.

(11) A majority of members constitutes a quorum for the purposes of conducting business and exercising powers and responsibilities. Action may be taken by a majority vote of members present and voting, unless the resolution creating the board, district, or commission specifies otherwise.

(12) An administrative board, district, or commission shall provide for the keeping of written minutes, including the final vote on all actions and the vote of each member.

(13) An administrative board, district, or commission shall provide by rule for the date, time, and place of regularly scheduled meetings and file the information with the county commissioners.

(14) Unless otherwise provided by law, a person must be a resident of the county to be eligible for appointment to an administrative board, district, or commission. The county commissioners may prescribe by resolution additional qualifications for membership.

(15) A person may be removed from an administrative board, district, or commission for cause by the county commissioners or as provided by resolution.

(16) A resolution creating an administrative board, district, or commission must contain, if applicable, budgeting and accounting requirements for which the board, district, or commission is accountable to the county commissioners.

History: **En. Sec. 1, Ch. 543, L. 1995.**

7-1-202. Transition of existing boards and creation of new boards. (1) Unless otherwise specified by law, the state laws providing for the organization and operation of the following administrative boards, districts, and commissions must be given the status of local ordinances for 1 year following October 1, 1995, and the following boards, districts, and commissions shall continue to function during this period under the respective laws until the boards, districts, or commissions are reorganized by the county commissioners pursuant to the provisions of 7-1-201:

(a) county building commission;
(b) cemetery districts;
(c) county fair commission;
(d) mosquito control board;
(e) museum board;
(f) board of park commissioners;
(g) rodent control board;
(h) solid waste district;
(i) television district;
(j) weed control district.

(2) Subject to 7-1-201 and 7-1-203, a county may create administrative boards, districts, and commissions, in addition to those listed in subsection (1), that are not otherwise provided for by law.

History: **En. Sec. 2, Ch. 543, L. 1995.**

7-1-203. County commissioners to assume duties of administrative boards, districts, and commissions. (1) If the minimum number of qualified persons is not available for membership on an administrative board, district, or commission, the county commissioners may by resolution, at a public meeting, assume the duties of the administrative board, district, or commission and may act as that board, district, or commission with the same powers and duties as that board, district, or commission.

(2) County commissioners, acting in the capacity of an administrative board, district, or commission may not receive any compensation in addition to their compensation as county commissioners.

History: **En. Sec. 3, Ch. 543, L. 1995.**

Parts 3 through 20 reserved

Part 21

Counties

Part Cross-References

Change of county boundary, Art. XI, sec. 2, Mont. Const.

Creation, alteration, and abandonment of counties, Title 7, ch. 2, parts 1 and 21 through 27.

Operational status of self-government city-county consolidated local governments, 7-5-201.

County boundary descriptions, see Vol. I, Annotations.

7-1-2101. Nature of county. (1) A county is the largest political division of the state having corporate power.

(2) Every county is a body politic and corporate and as such has the power specified in this code or in special statutes and such powers as are necessarily implied from those expressed.

History: (1)En. Sec. 4100, Pol. C. 1895; re-en. Sec. 2781, Rev. C. 1907; re-en. Sec. 4293, R.C.M. 1921; Cal. Pol. C. Sec. 3901; re-en. Sec. 4293, R.C.M. 1935; Sec. 16-101, R.C.M. 1947; (2)En. Sec. 4190, Pol. C. 1895; re-en. Sec. 2870, Rev. C. 1907; re-en. Sec. 4441, R.C.M. 1921; Cal. Pol. C. Sec. 4000; re-en. Sec. 4441, R.C.M. 1935; Sec. 16-801, R.C.M. 1947; R.C.M. 1947, 16-101, 16-801.

Cross-References

General powers of local governments, Art. XI, sec. 4, Mont. Const.

Powers of counties — liberal construction, Art. XI, sec. 6, Mont. Const.

Powers of self-governing local governments, Art. XI, sec. 6, Mont. Const.; Title 7, ch. 1, part 1.

7-1-2102. Name of county. The name of a county designated in the law creating it is its corporate name, and it must be known and designated thereby in all actions and proceedings touching its corporate rights, property, and duties. This provision does not prevent county officers, when authorized by law, from suing in their name of office for the benefit of the county.

History: En. Sec. 4192, Pol. C. 1895; re-en. Sec. 2872, Rev. C. 1907; re-en. Sec. 4443, R.C.M. 1921; Cal. Pol. C. Sec. 4002; re-en. Sec. 4443, R.C.M. 1935; R.C.M. 1947, 16-803.

Cross-References

Change of name of county, Title 7, ch. 2, part 25.

7-1-2103. County powers. A county has power to:

(1) sue and be sued;

(2) purchase and hold lands within its limits;

(3) make such contracts and purchase and hold such personal property as may be necessary to the exercise of its powers;

(4) make such orders for the disposition or use of its property as the interests of its inhabitants require;

(5) levy and collect such taxes for the purposes under its exclusive jurisdiction as are authorized by this code or by special statutes.

History: En. Sec. 1, p. 498, Bannack Stat.; re-en. Sec. 1, p. 433, Cod. Stat. 1871; re-en. Sec. 335, 5th Div. Rev. Stat. 1879; re-en. Sec. 744, 5th Div. Comp. Stat. 1887; amd. Sec. 4193, Pol. C. 1895; re-en. Sec. 2873, Rev. C. 1907; re-en. Sec. 4444, R.C.M. 1921; Cal. Pol. C. Sec. 4003; re-en. Sec. 4444, R.C.M. 1935; R.C.M. 1947, 16-804.

Cross-References

Powers to be liberally construed, Art. XI, sec. 4, Mont. Const.

County control of litter, 7-5-2109.

County authority to establish speed limits, 7-14-2113.

Restriction on local government regulation of firearms, 45-8-351.

7-1-2104. Exercise of county power. A county's powers can only be exercised by the board of county commissioners or by agents and officers acting under their authority or authority of law.

History: En. Sec. 4191, Pol. C. 1895; re-en. Sec. 2871, Rev. C. 1907; re-en. Sec. 4442, R.C.M. 1921; Cal. Pol. C. Sec. 4001; re-en. Sec. 4442, R.C.M. 1935; R.C.M. 1947, 16-802.

7-1-2105 through 7-1-2110 reserved.

7-1-2111. Classification of counties. (1) For the purpose of regulating the compensation and salaries of all county officers, not otherwise provided for, and for fixing the penalties of officers' bonds, the counties of this state must be classified according to the taxable valuation of the property in the counties upon which the tax levy is made, except for vehicles subject to taxation under 61-3-504(2), as follows:

(a) first class—all counties having a taxable valuation of $50 million or over;

(b) second class—all counties having a taxable valuation of more than $30 million and less than $50 million;

(c) third class—all counties having a taxable valuation of more than $20 million and less than $30 million;

(d) fourth class—all counties having a taxable valuation of more than $15 million and less than $20 million;

(e) fifth class—all counties having a taxable valuation of more than $10 million and less than $15 million;

(f) sixth class—all counties having a taxable valuation of more than $5 million and less than $10 million;

(g) seventh class—all counties having a taxable valuation of less than $5 million.

(2) As used in this section, taxable valuation means the taxable value of taxable property in the county as of the time of determination plus:

(a) that portion of the taxable value of the county on December 31, 1981, attributable to automobiles and trucks having a rated capacity of three-quarters of a ton or less;

(b) that portion of the taxable value of the county on December 31, 1989, attributable to automobiles and trucks having a rated capacity of more than three-quarters of a ton but less than or equal to 1 ton;

(c) the value provided by the department of revenue under 15-36-324(10); and

(d) 6% of the taxable value of the county on January 1 of each tax year.

History: En. Sec. 1, Ch. 20, L. 1905; re-en. Sec. 2973, Rev. C. 1907; amd. Sec. 1, Ch. 70, L. 1915; amd. Sec. 1, Ch. 76, L. 1917; amd. Sec. 1, Ch. 24, Ex. L. 1919; re-en. Sec. 4741, R.C.M. 1921; re-en. Sec. 4741, R.C.M. 1935; R.C.M. 1947, 16-2419(part); amd. Sec. 38, Ch. 614, L. 1981; amd. Sec. 18, Ch. 695, L. 1985; amd. Sec. 1, Ch. 611, L. 1987; amd. Sec. 1, Ch. 655, L. 1987; amd. Sec. 1, Ch. 612, L. 1989; amd. Sec. 66, Ch. 11, Sp. L. June 1989; amd. Sec. 1, Ch. 161, L. 1991; amd. Sec. 10, Ch. 9, Sp. L. November 1993; amd. Sec. 21, Ch. 451, L. 1995.

Compiler's Comments

1995 Amendment: Chapter 451 in (1), in introductory clause after "according to", substituted "the taxable" for "that percentage of the true and full"; substituted (2)(c) concerning value provided by Department for "the amount of taxes levied on new production, production from horizontally completed wells, and incremental production, as provided in 15-23-607, divided by the appropriate tax rates described in 15-23-607(2)(a), (2)(b), or (2)(c) and multiplied by 60%"; deleted former (2)(d) that read: "(d) the amount of value represented by new production or production from horizontally completed wells exempted from tax as provided in 15-23-612 multiplied by 60%, plus the value of any other production occurring after December 31, 1988, multiplied by 60%"; and made minor changes in style. Amendment effective January 1, 1996.

Applicability: Section 55, Ch. 451, L. 1995, provided: "(1) [This act] applies to oil and natural gas produced and sold on or after January 1, 1996.

(2) (a) [Sections 21 through 26] [7-1-2111, 7-7-2101, 7-7-2203, 7-14-2524, 7-14-2525, and 7-16-2327] apply to county fiscal years beginning after June 30, 1996.

(b) [Sections 38 through 46] [20-9-104, 20-9-141, 20-9-161, 20-9-331, 20-9-333, 20-9-501, 20-9-507, 20-10-144, and 20-10-146] apply to school fiscal years beginning after June 30, 1996.

(3) (a) An operator is subject to provisions of Title 15, chapter 23, parts 1 and 6; Title 15, chapter 36; Title 15, chapter 38; and Title 82, chapter 11, part 1, as those laws read on December 31, 1995, for all oil and natural gas produced and sold by the operator before January 1, 1996.

(b) Except as provided in subsection (3)(c), the payment, collection, and distribution of taxes on oil and natural gas production occurring before January 1, 1996, must be made according to the provisions of the laws referred to in subsection (3)(a) governing the tax in effect on the last day of the tax period in which the activity, enterprise, or product being taxed was engaged in, took place, or was produced and sold.

(c) [Section 19] [15-36-325] applies to the payment, collection, and distribution of the local government severance tax for oil and natural gas produced and sold after December 31, 1994, and before January 1, 1996.

(d) All taxes collected pursuant to audit or collected after the date the tax is payable under the laws referred to in subsection (3)(a) must be distributed according to the statute governing allocation of the tax in effect on the date when the tax liability was incurred."

Cross-References

City-county consolidated units of local government — applicability of classification, 7-3-1214.

7-1-2112. Designation of county classification by county commissioners. (1) The several boards of county commissioners must, at their regular session in September of each year, make an order designating the class to which such county belongs, as determined by the taxable valuation of such county for the year in which such order is made, under and in accordance with the provisions of 7-1-2111.

(2) Such classification shall not change the government of the county then in existence until the next succeeding first Monday in January.

History: En. Sec. 4331, Pol. C. 1895; re-en. Sec. 3, Ch. 20, L. 1905; re-en. Sec. 2975, Rev. C. 1907; re-en. Sec. 4742, R.C.M. 1921; re-en. Sec. 4742, R.C.M. 1935; amd. Sec. 1, Ch. 43, L. 1941; amd. Sec. 1, Ch. 40, L. 1974; R.C.M. 1947, 16-2420.

7-1-2113 through 7-1-2120 reserved.

7-1-2121. Publication and content of notice. Unless otherwise specifically provided, whenever a local government unit other than a municipality is required to give notice by publication, the following applies:

(1) Publication must be in a newspaper meeting the qualifications of subsections (2) and (3), except that in a county where no newspaper meets these qualifications, publication must be made in a qualified newspaper in an adjacent county. If there is no qualified newspaper in an adjacent county, publication must be made by posting the notice in three public places in the county, designated by resolution of the governing body.

(2) The newspaper must be:

(a) of general paid circulation with a second-class mailing permit;

(b) published at least once a week; and

(c) published in the county where the hearing or other action will take place.

(3) In the case of a contract award, the newspaper must have been published continuously in the county for the 12 months preceding the awarding of the contract.

(4) If a person is required by law or ordinance to pay for publication, the payment must be received before the publication may be made.

(5) The notice must be published twice, with at least 6 days separating publication. The first publication must be no more than 21 days prior to the action and the last no less than 3 days prior to the action.

(6) The published notice must contain:

(a) the date, time, and place of the hearing or other action;

(b) a brief statement of the action to be taken;

(c) the address and telephone number of the person who may be contacted for further information on the action to be taken; and

(d) any other information required by the specific section requiring notice by publication.

(7) A published notice required by law may be supplemented by a radio or television broadcast of the notice in the manner prescribed in 2-3-105.

History: En. Sec. 1, Ch. 349, L. 1985.

Cross-References

County printing, Title 7, ch. 5, part 24.

Publication of resolution of intent to form road improvement district, 7-14-2902.

Consolidation of fire districts, 7-33-2120.

7-1-2122. Mail notice. (1) Unless otherwise specifically provided, whenever a local government unit other than a municipality is required to give notice of a hearing or other official act by mail, the requirement may be met by:

(a) deposit of the notice, properly addressed, in the United States mail with postage paid at the first-class rate;

(b) sending the notice by certified mail rather than first class; or

(c) mailing the notice at the bulk rate instead of first class if notice is to be given by mail to all electors or residents of the affected local government unit.

(2) The notice shall contain:

(a) the date, time, and place of the hearing or other action;

(b) a brief statement of the action to be taken;

(c) the address and telephone number of the person who may be contacted for further information on the action to be taken; and

(d) any other information required by the specific section requiring mail notice.

(3) When notice by mail is required, the requirement applies only to persons whose addresses are known.

History: En. Sec. 2, Ch. 349, L. 1985.

Cross-References

Notice of intent to form road improvement district required, 7-14-2902, 7-14-2903.

Parts 22 through 40 reserved

Part 41
Municipalities

Part Cross-References

Operational status of self-government city-county consolidated local governments, 7-5-201.

7-1-4101. Nature of municipalities. A city or town is a body politic and corporate with the general powers of a corporation and the powers specified or necessarily implied in this title or in special laws heretofore enacted.

History: En. Secs. 323, 324, 5th Div. Comp. Stat. 1887; re-en. Sec. 4700, Pol. C. 1895; re-en. Sec. 3202, Rev. C. 1907; re-en. Sec. 4955, R.C.M. 1921; Cal Pol. C. Sec. 4354; re-en. Sec. 4955, R.C.M. 1935; R.C.M. 1947, 11-101.

Cross-References

Powers of incorporated cities and towns to be liberally construed, Art. XI, sec. 4(2), Mont. Const.

7-1-4102. Name of municipality. Every city or town organized under this title is entitled "the city of ...." (naming it) or "the town of ...." (naming it) and by such name has perpetual succession.

History: En. Secs. 323, 324, 5th Div. Comp. Stat. 1887; en. Sec. 4703, Pol. C. 1895; re-en. Sec. 3205, Rev. C. 1907; re-en. Sec. 4958, R.C.M. 1921; re-en. Sec. 4958, R.C.M. 1935; R.C.M. 1947, 11-104(part).

7-1-4103. Repealed. Sec. 30, Ch. 455, L. 1979.

History: En. Secs. 323, 324, 5th Div. Comp. Stat. 1887; en. Sec. 4703, Pol. C. 1895; re-en. Sec. 3205, Rev. C. 1907; re-en. Sec. 4958, R.C.M. 1921; re-en. Sec. 4958, R.C.M. 1935; R.C.M. 1947, 11-104(part).

7-1-4104. Repealed. Sec. 30, Ch. 455, L. 1979.

History: (1)En. Secs. 323, 324, 5th Div. Comp. Stat. 1887; en. Sec. 4701, Pol. C. 1895; re-en. Sec. 3203, Rev. C. 1907; re-en. Sec. 4956, R.C.M. 1921; Cal. Pol. C. Sec. 4355; re-en. Sec. 4956, R.C.M. 1935; Sec. 11-102, R.C.M. 1947; (2)En. Secs. 323, 324, 5th Div. Comp. Stat. 1887; en. Sec. 4702, Pol. C. 1895; re-en. Sec. 3204, Rev. C. 1907; re-en. Sec. 4957, R.C.M. 1921; re-en. Sec. 4957, R.C.M. 1935; Sec. 11-103, R.C.M. 1947; R.C.M. 1947, 11-102, 11-103.

7-1-4105 through 7-1-4110 reserved.

7-1-4111. Classification of municipalities. (1) Every city having a population of 10,000 or more is a city of the first class.

(2) Every city having a population of less than 10,000 and more than 5,000 is a city of the second class.

(3) Every city having a population of less than 5,000 and more than 1,000 is a city of the third class.

(4) Every municipal corporation having a population of less than 1,000 and more than 300 is a town.

History: En. Sec. 4710, Pol. C. 1895; re-en. Sec. 3206, Rev. C. 1907; re-en. Sec. 4959, R.C.M. 1921; re-en. Sec. 4959, R.C.M. 1935; amd. Sec. 1, Ch. 202, L. 1947; amd. Sec. 1, Ch. 126, L. 1969; R.C.M. 1947, 11-201(part); amd. Sec. 1, Ch. 250, L. 1979.

7-1-4112. Exceptions from classification system. Notwithstanding the provisions of 7-1-4111:

(1) every municipal corporation having a population of more than 5,000 and less than 7,500 may, by resolution adopted by the city council pursuant to 7-1-4114 through 7-1-4118, be either a second-class city or a third-class city; and

(2) every municipal corporation having a population of more than 1,000 and less than 2,500 may, by resolution adopted by the city or town council, as the case may be, pursuant to 7-1-4114 through 7-1-4118, be either a city or town.

History: En. Sec. 4710, Pol. C. 1895; re-en. Sec. 3206, Rev. C. 1907; re-en. Sec. 4959, R.C.M. 1921; re-en. Sec. 4959, R.C.M. 1935; amd. Sec. 1, Ch. 202, L. 1947; amd. Sec. 1, Ch. 126, L. 1969; R.C.M. 1947, 11-201(part).

7-1-4113. Basis of classification. The census taken under the direction of the congress of the United States in 1890 and every 10 years thereafter shall be the basis upon which the respective populations of said municipal corporations shall be determined, unless a direct enumeration of the inhabitants thereof be made by the state or municipal corporation, in which case such direct enumeration constitutes such basis.

History: En. Sec. 4711, Pol. C. 1895; re-en. Sec. 3207, Rev. C. 1907; re-en. Sec. 4960, R.C.M. 1921; re-en. Sec. 4960, R.C.M. 1935; R.C.M. 1947, 11-202.

7-1-4114. Advance in classification of municipalities. Whenever it manifestly appears to a city or town council from the last federal, state, county, city, or town census that such city or town has the requisite population to entitle it to be classified as provided in 7-1-4111 and 7-1-4112, such city or town must be advanced as provided in 7-1-4115.

History: En. Sec. 4950, Pol. C. 1895; amd. Sec. 1, p. 225, L. 1897; re-en. Sec. 3447, Rev. C. 1907; re-en. Sec. 4969, R.C.M. 1921; re-en. Sec. 4969, R.C.M. 1935; R.C.M. 1947, 11-301.

7-1-4115. Procedure to advance municipal classification. (1) If it appears by such census that the city or town contains the requisite population to be advanced, the council must thereupon by resolution declare, as the case may be, that:

(a) the town is advanced to a city of the first, second, or third class;

(b) a city of the third class is advanced to a city of the second or first class; or

(c) a city of the second class is advanced to a city of the first class.

(2) The city or town council must file a certified copy of such resolution in the office of the county clerk of the county and in the office of the secretary of state. Whereupon such town becomes a city of the first, second, or third class; a city of the third class becomes a city of the second or first class; and a city of the second class becomes a city of the first class, as the case may be, to be governed under the provisions of this code relative to cities and towns.

History: En. Sec. 4951, Pol. C. 1895; amd. Sec. 2, p. 225, L. 1897; re-en. Sec. 3448, Rev. C. 1907; re-en. Sec. 4970, R.C.M. 1921; re-en. Sec. 4970, R.C.M. 1935; R.C.M. 1947, 11-302.

Cross-References

Firefighters' Unified Retirement System — effect of reduction in classification, 19-13-210.

7-1-4116. Officers of reclassified municipality. The first election of officers of the new municipal corporation organized under the provisions of 7-1-4114 through 7-1-4118 must be at the first annual municipal election after such proceedings, and the old officers remain in office until the new officers are elected and qualified.

History: En. Sec. 4952, Pol. C. 1895; re-en. Sec. 3449, Rev. C. 1907; re-en. Sec. 4971, R.C.M. 1921; re-en. Sec. 4971, R.C.M. 1935; R.C.M. 1947, 11-303.

7-1-4117. Status of legislative actions taken prior to reclassification. All ordinances, bylaws, and resolutions adopted by the old municipal corporation, as far as consistent with the provisions of this code relative to cities and towns, remain in force until repealed by the council of the new municipal corporation.

History: En. Sec. 4953, Pol. C. 1895; re-en. Sec. 3450, Rev. C. 1907; re-en. Sec. 4972, R.C.M. 1921; re-en. Sec. 4972, R.C.M. 1935; R.C.M. 1947, 11-304.

7-1-4118. Reduction in classification of municipalities. (1) Whenever it appears by the census taken by the United States, the state, or otherwise that the population of a city of the first or second class has decreased so as to be insufficient in number to entitle it to be a city of that class, the council must thereupon, by resolution declare that such city be reduced to a city of the second class or town as the case may be.

(2) A certified copy of such resolution must be filed in the office of the county clerk and in the office of the secretary of state, and thereafter such city becomes a city of the second class or a town, as the case may be, to be governed under the provisions of this code relative to cities and towns.

(3) The provisions of 7-1-4116 and 7-1-4117 apply to this section.

History: En. Sec. 4954, Pol. C. 1895; re-en. Sec. 3451, Rev. C. 1907; re-en. Sec. 4973, R.C.M. 1921; re-en. Sec. 4973, R.C.M. 1935; R.C.M. 1947, 11-305.

7-1-4119 and 7-1-4120 reserved.

7-1-4121. General definitions. As used in 7-1-4121 through 7-1-4149, unless otherwise provided, the following definitions apply:

(1) "Charter" means a written document defining the powers, structure, privileges, rights, and duties of the government and limitations thereon.

(2) "Chief executive" means the elected executive in a government adopting the commission-executive form, the manager in a government adopting the commission-manager form, the chairman in a government adopting the commission-chairman form, the town chairman in a government adopting the town meeting form, the commission acting as a body in a government adopting the commission form, or the officer or officers so designated in the charter in a government adopting a charter.

(3) "Elector" means a resident of the municipality qualified and registered to vote under state law.

(4) "Employee" means a person other than an officer who is employed by a municipality.

(5) "Executive branch" means that part of the municipality, including departments, offices, and boards, charged with implementing actions approved and administering policies adopted by the governing body of the local government or performing the duties required by law.

(6) "Governing body" means the commission or town meeting legislative body established in the alternative form of local government.

(7) "Guideline" means a suggested or recommended standard or procedure to serve as an index of comparison and is not enforceable as a regulation.

(8) "Law" means a statute enacted by the legislature of Montana and approved and signed by the governor or a statute adopted by the people of Montana through statutory initiative procedures.

(9) "Municipality" means an entity which incorporates as a city or town.

(10) "Office of the municipality" means the permanent location of the seat of government from which the records administrator, or the office of the clerk of the governing body where one is appointed, carries out his duties.

(11) "Officer" means a person holding a position with a municipality which is ordinarily filled by election or, in those municipalities with a manager, the manager.

(12) "Ordinance" means an act adopted and approved by a municipality, having effect only within the jurisdiction of the local government.

(13) "Person" means any individual, firm, partnership, company, corporation, trust, trustee, assignee or other representative, association, or other organized group.

(14) "Plan of government" means a certificate submitted by a governing body that documents the basic form of government selected, including all applicable suboptions. The plan must establish the terms of all officers and the number of commissioners, if any, to be elected.

(15) "Political subdivision" refers to a local government, authority, school district, or multicounty agency.

(16) "Population" means the number of inhabitants as determined by an official federal, state, or local census or official population estimate approved by the department of commerce.

(17) "Printed" means the act of reproducing a design on a surface by any process as defined by 1-1-203(3).

(18) "Public agency" means a political subdivision, Indian tribal council, state or federal department or office, or the Dominion of Canada or any provincial department or office or political subdivision thereof.

(19) "Public property" means any and all property owned by a municipality or held in the name of a municipality by any of the departments, boards, or authorities of the local government.

(20) "Real property" means lands, structures, buildings, and interests in land, including lands under water and riparian rights, and all things and rights usually included within the term "real property", including not only fee simple absolute but also all lesser interests such as easements, rights-of-way, uses, leases, licenses, and all other incorporeal hereditaments and every estate, interest, or right, legal or equitable, pertaining to real property.

(21) "Reproduced" means the act of reproducing a design on any surface by any process.

(22) "Resolution" means a statement of policy by the governing body or an order by the governing body that a specific action be taken.

(23) "Service" means an authorized function or activity performed by local government.

(24) "Structure" means the entire governmental organization through which a local government carries out its duties, functions, and responsibilities.

History: En. Sec. 1, Ch. 455, L. 1979; amd. Sec. 7, Ch. 274, L. 1981; amd. Sec. 1, Ch. 114, L. 1983.

Cross-References

Qualifications of electors, Art. IV, sec. 2, Mont. Const.; 13-1-111.

Alternative forms of government, Title 7, ch. 3.

Charter form of government, Title 7, ch. 3, part 7.

7-1-4122. Distribution of powers. (1) A municipality has legislative, executive, and judicial powers.

(2) All legislative powers are vested in the governing body of the municipality.

(3) Executive powers are vested as provided in the form of government adopted by the municipality.

(4) The judicial powers of a municipality are vested in the municipal court.

History: **En. Sec. 23, Ch. 455, L. 1979.**

Cross-References

Municipal Courts, Title 3, ch. 6.

City Courts, Title 3, ch. 11.

Alternative forms law — definitions of types of local government forms, Title 7, ch. 3.

7-1-4123. Legislative powers. A municipality with general powers has the legislative power, subject to the provisions of state law, to adopt, amend, and repeal ordinances and resolutions required to:

(1) preserve peace and order and secure freedom from dangerous or noxious activities;

(2) secure and promote the general public health and welfare;

(3) provide any service or perform any function authorized or required by state law;

(4) exercise any power granted by state law;

(5) levy any tax authorized by state law;

(6) appropriate public funds;

(7) impose a special assessment reasonably related to the cost of any special service or special benefit provided by the municipality or impose a fee for the provision of a service;

(8) grant franchises; and

(9) provide for its own organization and the management of its affairs.

History: **En. Sec. 24, Ch. 455, L. 1979.**

Cross-References

Powers to be liberally construed, Art. XI, sec. 4, Mont. Const.

Resort community tax, 7-6-4462.

Restriction on local government regulation of firearms, 45-8-351.

Authority to enact ordinance concerning driving under the influence, 61-8-401.

7-1-4124. Powers. A municipality with general powers has the power, subject to the provisions of state law, to:

(1) enact ordinances and resolutions;

(2) sue and be sued;

(3) buy, sell, mortgage, rent, lease, hold, manage, or dispose of any interest in real or personal property;

(4) contract with persons, corporations, or any other governmental entity;

(5) pay debts and expenses;

(6) borrow money;

(7) solicit and accept bequests, donations, or grants of money, property, services, or other advantages and comply with any condition that is not contrary to the public interest;

(8) execute documents necessary to receive money, property, services, or other advantages from the state government, the federal government, or any other source;

(9) make grants and loans of money, property, and services for public purposes;

(10) require the attendance of witnesses and production of documents relevant to matters being considered by the governing body;

(11) hire, direct, and discharge employees and appoint and remove members of boards;

(12) ratify any action of the municipality or its officers or employees which could have been approved in advance;

(13) have a corporate seal and flag;

(14) acquire by eminent domain as provided in Title 70, chapter 30, any interest in property to provide any service or facility authorized by law;

(15) initiate a civil action to restrain or enjoin violation of an ordinance;

(16) enter private property, obtaining warrants when necessary, for the purpose of enforcing ordinances that affect the general welfare and public safety;

(17) conduct a census;

(18) conduct inventories of public property and preparatory studies;

(19) condemn and demolish hazardous structures;

(20) purchase insurance and establish self-insurance plans;

(21) impound animals and other private property creating a nuisance or obstructing a street or highway;

(22) establish quarantines; and

(23) exercise powers not inconsistent with law necessary for effective administration of authorized services and functions.

History: En. Sec. 25, Ch. 455, L. 1979.

Cross-References

Powers to be liberally construed, Art. XI, sec. 4, Mont. Const.

7-1-4125. Limit on liability. (1) As provided in Article II, section 18, of the Montana constitution, a municipality has no immunity from suit for injury to a person or property, except as may be specifically provided by law by a two-thirds vote of each house of the legislature.

(2) A local government has the right but not the duty to purchase insurance to protect against claims for injury to a person or property.

(3) Local governments are subject to the provisions of Title 2, chapter 9.

History: En. Sec. 26, Ch. 455, L. 1979.

7-1-4126. Administrative rules. The governing body may by ordinance authorize the chief executive to adopt administrative rules. All administrative rules shall be entered in an administrative code that shall be available in the office of the municipality.

History: En. Sec. 2, Ch. 455, L. 1979.

Cross-References

Not subject to Montana Administrative Procedure Act, 2-4-102.

7-1-4127. Publication of notice. (1) When a municipality is required to publish notice, publications shall be in a newspaper, except that in a municipality with a population of 500 or less or in which no newspaper is published, publication may be made by posting in three public places in the municipality which have been designated by ordinance.

(2) The newspaper shall be:

(a) of general paid circulation with a second-class mailing permit;

(b) published at least once a week;

(c) published in the county where the municipality is located;

(d) published continuously in the county for the 12 months preceding the awarding of the contract.

(3) In a county where no newspaper meets these qualifications, publication shall be made in a qualified newspaper in an adjacent county.

(4) If a person is required by law or ordinance to pay for publication, the payment must be received before the publication may be made.

History: En. Sec. 3, Ch. 455, L. 1979.

Cross-References

Municipal printing contract, 7-5-4108.

7-1-4128. Notice. When notice of a hearing or other official act is required, the following shall apply:

(1) The notice shall be published two times with at least 6 days separating each publication. The first publication shall be no more than 21 days prior to the action and the last no less than 3 days prior to the action.

(2) The published notice shall contain:

(a) the date, time, and place at which the hearing or other action will occur;

(b) a brief statement of the action to be taken;

(c) the address and telephone number of the person who can be contacted for further information on the action to be taken; and

(d) any other information required by the specific section requiring notice.

(3) A published notice required by law may be supplemented by a radio or television broadcast of the notice in the manner prescribed in 2-3-105 through 2-3-107.

History: En. Sec. 4, Ch. 455, L. 1979.

Cross-References

Right to participate in government, Art. II, sec. 8, Mont. Const.

7-1-4129. Mail notice. (1) Unless otherwise specifically provided, when a municipality is required to give notice of a hearing or other official act by mail, the requirement may be met by:

(a) deposit of the notice properly addressed in the United States mail with postage paid at the first-class rate;

(b) sending the notice by certified mail rather than first class; or

(c) mailing the notice at the bulk rate instead of first class when notice is to be given by mail to 200 or more electors or residents of a municipality.

(2) The notice shall contain:

(a) the date, time, and place at which the hearing or other action will be taken;

(b) a brief statement of the action to be taken;

(c) the address and telephone number of the person who can be contacted for further information on the action to be taken; and

(d) any other information required by the specific section requiring mail notice.

(3) When notice by mail is required, the requirement shall apply only to persons whose addresses are known.

History: En. Sec. 5, Ch. 455, L. 1979; amd. Sec. 1, Ch. 11, L. 1989.

7-1-4130. Petition. Whenever a petition is authorized, unless the section authorizing the petition establishes different criteria, the petition is subject to 7-5-131 through 7-5-137.

History: En. Sec. 6, Ch. 455, L. 1979; amd. Sec. 7, Ch. 274, L. 1981; amd. Sec. 1, Ch. 287, L. 1983; amd. Sec. 1, Ch. 164, L. 1985; amd. Sec. 1, Ch. 359, L. 1991.

Cross-References

Resort community tax, 7-6-4462.

7-1-4131. Public hearing. (1) When required, the governing body shall conduct public hearings for the purpose of providing reasonable opportunity for citizen participation prior to final decisions.

(2) At a minimum, a public hearing shall provide for submission of both oral and written testimony for and against the action or matter at issue. If the hearing is not held before the ultimate decision makers, provision shall be made for the transmittal of a summary or transcript of the testimony received to the ultimate decision makers prior to their determination.

(3) Public hearings may be held at regular or special meetings of the governing body.

(4) Petitions and letters received by the governing body or executive prior to the hearing shall be entered by reference into the minutes of the governing body and considered as other testimony received at the hearing.

(5) Hearings may be adjourned from day to day or to a date certain.

(6) Except for budget hearings, the governing body may designate a subcommittee or hearing examiner to conduct public hearings.

History: En. Sec. 7, Ch. 455, L. 1979.

Cross-References

Right to participate in government process, Art. II, sec. 8, Mont. Const.

Open meetings required, Art. II, sec. 9, Mont. Const.; Title 2, ch. 3, part 2.

7-1-4132. Protest. (1) Whenever a protest is authorized, it is sufficient if it is in writing, signed, and contains the following:

(a) a description of the action protested sufficient to identify the action against which the protest is lodged;

(b) a statement of the protestor's qualifications to protest the action against which the protest is lodged, including ownership of property affected by the action; and

(c) the address of the person protesting.

(2) Protests shall be submitted as provided by law and ordinance. The person receiving protests for a municipality shall note on each protest the date it was received.

(3) A protest which contains the required information may be signed by more than one person. A protest signed by more than one person is a valid protest by each signer.

(4) A person may in writing withdraw a previously filed protest at any time prior to final action by the governing body.

(5) Signers are encouraged to print their names after their signatures.

History: En. Sec. 8, Ch. 455, L. 1979.

7-1-4133. Signatures. (1) The signatures and addresses on petitions shall be the same as the signatures and addresses on voter registration cards and, if not registered or if not required by law to be an elector, their common signature. If the elector has signed using an initial letter only in place of a name written on the registry card or using a name or the initial letter of a name that is not on the registry card, the signature may nevertheless be counted so long as the signature, taken as a whole, bears sufficient similarity to the signature on the registry card as to provide reasonable certainty of its authenticity.

(2) The signatures on protests and waivers shall be the accepted common signatures.

History: En. Sec. 9, Ch. 455, L. 1979.

7-1-4134. Rights on behalf of government or corporation. The chief executive of a municipality or political subdivision of the state, the responsible agent of a federal or state agency, or the chief executive officer of a corporation may exercise the right of petition, protest, or voting on behalf of property owned by the government or corporation.

History: En. Sec. 10, Ch. 455, L. 1979.

7-1-4135. Posting. (1) The governing body shall specify by resolution a public location for posting information and shall order erected a suitable posting board.

(2) When posting is required, a copy of the document shall be placed on the posting board, and a copy shall be available at the municipal office.

History: En. Sec. 11, Ch. 455, L. 1979.

7-1-4136. Oaths. The chief executive and all elected municipal officers may administer oaths.

History: En. Sec. 12, Ch. 455, L. 1979.

Cross-References

Oath of office, Art. III, sec. 3, Mont. Const.

Oaths, Title 1, ch. 6.

7-1-4137. Oath of office. (1) Every elected and appointed municipal officer shall take the oath of office prescribed in Article III, section 3, of the Montana constitution. Before the officer performs any official duties, the oath of office, certified by the official before whom the oath was taken, must be filed. An elected officer shall file the oath with the county election administrator. Except as provided in subsection (2), an appointed officer shall file the oath with the city clerk.

(2) A person appointed to fill a vacancy in an elected municipal office shall file the oath of office with the county election administrator.

History: En. Sec. 13, Ch. 455, L. 1979; amd. Sec. 19, Ch. 575, L. 1981; amd. Sec. 1, Ch. 486, L. 1993.

7-1-4138. Public servants. All municipal officers and employees are public servants for the purpose of determining the offense of obstructing a public servant as provided in 45-7-302.

History: En. Sec. 14, Ch. 455, L. 1979.

7-1-4139. Waiver of mail notice or protest. (1) If all persons entitled to mail notice waive in writing the mail notice requirement, the governing body may proceed without the required mail notice.

(2) If all persons entitled to protest an action waive in writing their right to protest, the governing body may proceed without publishing notice or meeting other requirements designed to permit protests to be filed.

(3) A waiver is sufficient if it is in writing, signed, and contains the following:

(a) a description of the mailed notice or protest right waived;

(b) a statement of the protestor's qualifications to waive the mailed notice or protest right;

(c) the address of the person;

(d) a statement that the waiver of notice is voluntarily and knowingly given, with knowledge of the signer's constitutional rights to notice.

(4) Waivers shall be submitted as provided by law and ordinance. The person receiving waivers for a local government shall note on each waiver the date it was received.

(5) A waiver which contains the required information may be signed by more than one person. A waiver signed by more than one person is a valid waiver by each signer.

(6) Signers are encouraged to print their names after their signatures.

History: **En. Sec. 15, Ch. 455, L. 1979.**

7-1-4140. Facsimile signature. Any officer or employee may use a facsimile signature or seal as provided in Title 2, chapter 16.

History: **En. Sec. 16, Ch. 455, L. 1979.**

7-1-4141. Public meeting required. (1) All meetings of municipal governing bodies, boards, authorities, committees, or other entities created by a municipality shall be open to the public except as provided in 2-3-203.

(2) Appropriate minutes shall be kept of all public meetings and shall be made available upon request to the public for inspection and copying.

History: **En. Sec. 17, Ch. 455, L. 1979.**

Cross-References

Constitutional right to observe governmental deliberations, Art. II, sec. 9, Mont. Const.

7-1-4142. Public participation. Each municipal governing body, committee, board, authority, or entity, in accordance with Article II, section 8, of the Montana constitution and Title 2, chapter 3, shall develop procedures for permitting and encouraging the public to participate in decisions that are of significant interest to the public.

History: **En. Sec. 18, Ch. 455, L. 1979.**

7-1-4143. Participation. In any meeting required to be open to the public, the governing body, committee, board, authority, or entity shall adopt rules for conducting the meeting, affording citizens a reasonable opportunity to participate prior to the final decision.

History: **En. Sec. 19, Ch. 455, L. 1979.**

7-1-4144. Public records. (1) Except as provided in subsection (2), all records and other written materials in the possession of a municipality shall be available for inspection and reproduction by any person during normal office hours. The governing body may impose reasonable fees for providing copies of public records.

(2) Personal records, medical records, and other records which relate to matters in which the right to individual privacy exceeds the merits of public disclosure shall not be available to the public unless the person they concern requests they be made public.

(3) Except as provided by law and as determined by the chief law enforcement administrator, law enforcement records which relate to matters in which the right to individual privacy or law enforcement security exceeds the merits of public disclosure shall not be available to the public.

History: **En. Sec. 20, Ch. 455, L. 1979.**

Cross-References

Constitutional right to examine documents, Art. II, sec. 9, Mont. Const.

Minutes of meetings — public inspection, 2-3-212.

State records — access, 2-6-102.

Criminal justice information — privacy protection requirements, Title 44, ch. 5.

7-1-4145. State reports. (1) Municipal governing bodies, chief executives, officers, employees, departments, boards, and authorities shall file with state agencies in a timely fashion all reports and information required by state law.

(2) The department of commerce shall coordinate to the greatest extent possible the collection of data by state and federal agencies in order to minimize the requests of municipalities and to maximize access to information collected on municipalities.

(3) Prior to requesting reports from a municipality, all state agencies shall notify the department of commerce of the intended request.

History: En. Sec. 21, Ch. 455, L. 1979; amd. Sec. 7, Ch. 274, L. 1981; amd. Sec. 1, Ch. 287, L. 1983.

7-1-4146. Reports of departments, boards, and authorities. (1) All departments, boards, and authorities shall file an annual report with the chief executive, who shall compile the reports and present them to the governing body.

(2) The chief executive may specify the form, content, and deadline for filing reports.

History: En. Sec. 22, Ch. 455, L. 1979.

7-1-4147. State technical advice and assistance. (1) All state agencies are authorized and encouraged to provide technical assistance to municipalities.

(2) The technical assistance services shall not include those that can be as reasonably and expeditiously obtained through business channels.

(3) State agencies are encouraged to develop the capacity to provide technical advice and assistance without charge to municipalities, but they are also encouraged to establish service charges for special or extraordinary technical advice.

(4) The department of commerce shall coordinate technical advice and assistance provided to municipalities by state agencies.

(5) State agencies may lend personnel, equipment, and machinery to municipalities.

History: En. Sec. 27, Ch. 455, L. 1979; amd. Sec. 7, Ch. 274, L. 1981; amd. Sec. 1, Ch. 287, L. 1983.

Cross-References

Intergovernmental cooperation, Art. XI, sec. 7, Mont. Const.

7-1-4148. Penalty. Where a municipality is required by state law to provide information to a state agency and fails to provide the required information, the department of commerce may issue an order stopping payment of any state financial aid to the municipality. Upon provision of the information, all financial aid which was stopped because of failure to provide the information shall be paid to the municipality.

History: **En. Sec. 28, Ch. 455, L. 1979; amd. Sec. 7, Ch. 274, L. 1981; amd. Sec. 1, Ch. 287, L. 1983.**

7-1-4149. Applicability. (1) Except as provided in subsection (2), a provision of 7-1-4121 through 7-1-4148 applies only in the absence of other laws governing the same subject matter.

(2) The governing body may by ordinance adopt the procedures and provisions contained in 7-1-4121 through 7-1-4148 and make them applicable to all proceedings before the body.

History: **En. Sec. 29, Ch. 455, L. 1979.**

CHAPTER 2

CREATION, ALTERATION, AND ABANDONMENT OF LOCAL GOVERNMENTS

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Part 1

General Provisions Applicable to Local Government

Part Cross-References

County boundary change — vote required, Art. XI, sec. 2, Mont. Const.

7-2-101. Transcript of records upon alteration of boundary of local government. When any territory shall be detached from any county, city, or town in this state and annexed to any other county, city, or town:

(1) it shall be the duty of the proper officer of such county, city, or town to which said territory shall be annexed to demand from the proper officer of

the county, city, or town having custody of the public records of the territory a transcript of all public records pertaining to such territory; and

(2) it shall be the duty of such officer from whom they shall be demanded to furnish such authenticated transcripts of all such records in his office, which shall be paid for, after they shall be so furnished, by the county, city, or town to which said territory shall be annexed.

History: **En. Sec. 1, Ch. 36, L. 1911; re-en. Sec. 4418, R.C.M. 1921; re-en. Sec. 4418, R.C.M. 1935; R.C.M. 1947, 16-611.**

7-2-102. Apportionment of indebtedness and credits upon alteration of boundary of local government. When any territory shall be detached from any county, city, or town of this state and annexed to any other county, city, or town therein, such county, city, or town to which the same shall be annexed shall be liable to the county, city, or town from which the territory was so detached for its just share of liabilities and indebtedness and shall receive a just share of the credits from the county, city, or town from which the same shall have been detached, which shall be apportioned by ascertaining what ratio the portion detached bears to the territory from which the same was detached. The last prior assessment shall be used as a basis in determining the same.

History: **En. Sec. 2, Ch. 36, L. 1911; re-en. Sec. 4419, R.C.M. 1921; re-en. Sec. 4419, R.C.M. 1935; R.C.M. 1947, 16-612.**

7-2-103. Collection of taxes upon alteration of boundary of local government. Subject to the provisions of part 27 of this chapter, if any territory is detached from any county, city, or town and is annexed to any other county, city, or town therein, it does not invalidate or interfere with the collection of taxes in such territory and the taxes shall be collected by and the returns made to the county to which the territory is attached in the manner provided by law for levying and collecting taxes.

History: **En. Sec. 3, Ch. 36, L. 1911; re-en. Sec. 4420, R.C.M. 1921; re-en. Sec. 4420, R.C.M. 1935; R.C.M. 1947, 16-613; amd. Sec. 2, Ch. 250, L. 1979.**

Parts 2 through 20 reserved

Part 21

General Provisions Applicable to Counties

7-2-2101. Repealed. Sec. 21, Ch. 250, L. 1979.

History: **En. Sec. 4156, Pol. C. 1895; re-en. Sec. 2850, Rev. C. 1907; re-en. Sec. 4304, R.C.M. 1921; Cal. Pol. C. Sec. 3976; re-en. Sec. 4304, R.C.M. 1935; R.C.M. 1947, 16-112.**

7-2-2102. Apportionment of liabilities and assets upon creation or enlargement of county. (1) Every county which shall be enlarged or created from the territory taken from any other county or counties shall:

(a) be liable for a pro rata proportion of the existing debts and liabilities of the county or counties from which such territory shall be taken; and

(b) be entitled to a pro rata proportion of the assets of the county or counties from which such territory is taken.

(2) The share of liabilities and assets shall be determined as provided by 7-2-2204 and 7-2-2244 through 7-2-2246.

History: En. Sec. 1, Ch. 226, L. 1919; re-en. Sec. 4390, R.C.M. 1921; amd. Sec. 1, Ch. 106, L. 1929; re-en. Sec. 4390, R.C.M. 1935; amd. Sec. 6, Ch. 406, L. 1973; R.C.M. 1947, 16-501(part).

Cross-References

Alteration of county boundaries — vote required, Art. XI, sec. 2, Mont. Const.

7-2-2103. Qualifications for municipality or village to be county seat. No city, town, or village shall become the temporary or permanent county seat of any county organized under the provisions of part 22 or created by an act of the legislature unless such city or town shall have been incorporated in the manner provided by law or unless such village shall have been regularly platted and a plat thereof filed in the office of the county clerk and recorder and there be fifty qualified electors residing within the boundaries of such platted village.

History: En. Sec. 1, Ch. 16, Ex. L. 1919; re-en. Sec. 4392, R.C.M. 1921; re-en. Sec. 4392, R.C.M. 1935; R.C.M. 1947, 16-503(part).

Cross-References

Transfer of county seat — vote required, Art. XI, sec. 2, Mont. Const.

Organization and incorporation of new municipalities, Title 7, ch. 2, part 41.

7-2-2104. Transfer of certain records upon alteration of boundary of county. (1) In the event territory is taken from one county and added to another county, such plats and records covering such territory taken shall be transferred to the enlarged county.

(2) If any portion of the cost of preparing such records, maps, plats, or charts remains unpaid, said enlarged county shall pay its proportionate share of such cost as may be determined by the board of commissioners of the old county.

History: En. Sec. 1, Ch. 201, L. 1921; re-en. Sec. 4421, R.C.M. 1921; re-en. Sec. 4421, R.C.M. 1935; R.C.M. 1947, 16-614(part).

7-2-2105. Establishment of townships. The board of county commissioners must not set off or organize any new township unless a petition is presented to the board, signed by at least 50 citizens resident therein.

History: En. Sec. 18, p. 502, Bannack Stat.; re-en. Sec. 18, p. 436, Cod. Stat. 1871; re-en. Sec. 352, 5th Div. Rev. Stat. 1879; re-en. Sec. 757, 5th Div. Comp. Stat. 1887; re-en. Sec. 4231, Pol. C. 1895; re-en. Sec. 2895, Rev. C. 1907; re-en. Sec. 4468, R.C.M. 1921; re-en. Sec. 4468, R.C.M. 1935; R.C.M. 1947, 16-1102.

Part 22

Creation of New Counties by Petition

Part Cross-References

Change of county boundary — vote required, Art. XI, sec. 2, Mont. Const.

7-2-2201. Authorization to create new counties. (1) New counties may, from time to time, be formed and created in this state from portions of one or more counties which shall have been created and in existence for a period of more than 2 years, in the manner set forth and provided in this part.

(2) A county enlarged by the addition of territory taken from one or more other counties is a new county under the provisions of this part.

History: En. Sec. 1, Ch. 226, L. 1919; re-en. Sec. 4390, R.C.M. 1921; amd. Sec. 1, Ch. 106, L. 1929; re-en. Sec. 4390, R.C.M. 1935; amd. Sec. 6, Ch. 406, L. 1973; R.C.M. 1947, 16-501(part); amd. Sec. 1, Ch. 742, L. 1985.

7-2-2202. Limitations on creation of new counties. (1) No new county shall be established which shall reduce any county to an assessed valuation of less than $12 million, inclusive of all assessed valuation as shown by the last preceding assessment.

(2) No new county shall be formed which contains an assessed valuation of property less than $10 million, inclusive of all assessed valuation, as shown by the last preceding assessment of the county or counties from which such new county is to be established.

(3) No new county shall be established which shall reduce the area of any existing county from which territory is taken to form such new county to less than 500 square miles of surveyed land, exclusive of all forest reserve and Indian reservations within old counties.

(4) No territory shall be taken from one county and added to another county unless its surveyed area is greater than 49 square miles.

(5) No new county shall be formed which contains less than 250 square miles of surveyed land, exclusive of all forest reserve land or Indian reservations not open for settlement.

History: En. Sec. 1, Ch. 226, L. 1919; re-en. Sec. 4390, R.C.M. 1921; amd. Sec. 1, Ch. 106, L. 1929; re-en. Sec. 4390, R.C.M. 1935; amd. Sec. 6, Ch. 406, L. 1973; R.C.M. 1947, 16-501(part); amd. Sec. 2, Ch. 742, L. 1985.

7-2-2203. Repealed. Sec. 19, Ch. 742, L. 1985.

History: En. Sec. 1, Ch. 226, L. 1919; re-en. Sec. 4390, R.C.M. 1921; amd. Sec. 1, Ch. 106, L. 1929; re-en. Sec. 4390, R.C.M. 1935; amd. Sec. 6, Ch. 406, L. 1973; R.C.M. 1947, 16-501(part); amd. Sec. 263, Ch. 571, L. 1979.

7-2-2204. Basis for determination of assessed valuation. For the purposes of this part, the assessed valuation of all property, whether included within the boundaries of a proposed new county or remaining within the boundaries of any existing county or counties from which territory is taken, shall be fixed and determined on the same basis as is used for the imposition of taxes in Montana.

History: En. Sec. 1, Ch. 16, Ex. L. 1919; re-en. Sec. 4391, R.C.M. 1921; re-en. Sec. 4391, R.C.M. 1935; amd. Sec. 34, Ch. 566, L. 1977; R.C.M. 1947, 16-502.

Cross-References

Property tax assessment, Title 15, ch. 8.

7-2-2205. Petition for creation of new county — number of signatures required. (1) Whenever it is desired to divide any county or counties and form a new county out of a portion of the territory of the then-existing county or counties, a petition shall be presented to the board of county commissioners of the county from which the new county is to be formed, in case said proposed new county is to be formed from but one county, or to the board of county commissioners of the county from which the largest area of territory is proposed to be taken for the formation of such new county, in case said new county is to be formed from portions of two or more existing counties.

(2) (a) If the proposed new county is to be formed from a portion of only one existing county, the petition must be signed by at least 50% of the registered electors of the proposed new county.

(b) If the proposed new county is to be formed from portions of two or more counties, separate petitions shall be presented from the territory taken from each county, and each of the petitions shall be signed by at least 50% of the registered electors of the proposed portions.

(c) If the proposed new county is to be an existing county enlarged by territory taken from one or more other counties, a separate petition must be presented from each such territory, and each petition must be signed by at least 50% of the registered electors of the territory.

(3) For the purpose of determining the number of signatures needed on a petition to meet the percentage requirements of this section, the number of registered electors in a territory proposed to be included in a new county is the number of people registered to vote in that territory in the most recent general election.

History: En. Sec. 2, Ch. 226, L. 1919; re-en. Sec. 4393, R.C.M. 1921; re-en. Sec. 4393, R.C.M. 1935; amd. Sec. 7, Ch. 406, L. 1973; R.C.M. 1947, 16-504(part); amd. Sec. 264, Ch. 571, L. 1979; amd. Sec. 3, Ch. 742, L. 1985; (3)En. Sec. 6(1), Ch. 742, L. 1985; 7-2-2205(2)(d) (formerly (2)(c)) redes. 7-2-2206(4) by Code Commissioner, 1985.

7-2-2206. Contents of petition — petition approval procedure — deadline for filing signatures. (1) Such petition or petitions must contain:

(a) a legal description of the territory proposed to be taken from the county in which the petition is circulated;

(b) a general map, on a separate page or pages, which with shaded areas or darkened boundary lines will display to prospective petition signers the general outlines of the territory described in subsection (a);

(c) a statement of the assessed valuation of such proposed county as shown by the last preceding assessment, inclusive of all assessed valuation;

(d) a statement of the surveyed area, in square miles, which will remain in the county or counties from which territory is taken to form such new county after such county is formed; a statement of the surveyed area in square miles, which will be in the new county after formation; and a statement that the surveyed area of the territory proposed to be transferred is greater than 49 square miles;

(e) a warning that a person is subject to a $500 fine or 6 months in jail, or both, if he purposefully:

(i) signs a name other than his own to the petition;

(ii) signs more than once for the same issue; or

(iii) signs when not a legally registered voter residing in the territory to be added to the proposed new county;

(f) if the proposed new county is to be formed from one existing county, or from portions of two or more existing counties, the name of the proposed new county and a prayer that such proposed new county be organized into a new county under the provisions of this part; and

(g) if the proposed new county is to be an existing county enlarged by territory taken from one or more other counties, a prayer that this territory be added to the proposed new county under the provisions of this part.

(2) Each person must sign his name and address in substantially the same manner as on his voter registry card, or the signature will not be counted.

(3) Numbered lines must be provided for signatures. Each numbered line must contain spaces for the signature, the printed last name of the signer, and the signer's address.

(4) The signatures need not all be appended to one paper but may be signed to several petitions, which must be similar in form. When so signed, the several petitions may be fastened together and shall be treated and presented as one petition.

(5) Before a petition may be circulated for signatures, a sample petition must be submitted to the county election administrator in the form in which it will be circulated for approval as to form. The county election administrator shall refer a copy of the sample petition to the county attorney, who shall review the sample petition to ensure compliance with the requirements of this part. The county attorney shall cooperate with and provide necessary services to the person who submitted the petition to ensure that an adequate and valid legal description is written for the proposed new county boundaries. If the petition is rejected as to form, the county election administrator shall within 10 days after submission of the sample send written notice to the person who submitted the petition. If the petition is approved as to form, the election administrator shall within 21 days after submission of the sample send written notice to the person who submitted the petition. Thereafter the petition may not be challenged except with regard to the number and validity of signatures appended to it.

(6) All petition signatures must be collected and filed within 120 days of the date of the notice that the petition has been approved as to form.

History: En. Sec. 2, Ch. 226, L. 1919; re-en. Sec. 4393, R.C.M. 1921; re-en. Sec. 4393, R.C.M. 1935; amd. Sec. 7, Ch. 406, L. 1973; R.C.M. 1947, 16-504(part); amd. Sec. 4, Ch. 742, L. 1985; (4) redes. from 7-2-2205(2)(d) (formerly (2)(c)) by Code Commissioner, 1985; (5)En. Sec. 5, Ch. 742, L. 1985; (6)En. Sec. 6(2), Ch. 742, L. 1985.

7-2-2207. Affidavits to be attached to petition — verification of signatures. (1) There shall be attached and filed with each sheet or section of the petition or petitions an affidavit of the person who circulated the petition, stating that it is his belief that:

(a) it is signed by at least 50% of the qualified electors, as herein provided, of the proposed new county or of the proposed portion thereof taken from each existing county, where the proposed new county is to be formed from portions of two or more existing counties;

(b) the signatures affixed thereto are genuine; and

(c) each of such persons so signing was, at the date of such signing, a qualified elector of the proposed new county or of the portion thereof taken from an existing county.

(2) The clerk of the county receiving the petition shall check the names of all signers to verify that they are registered electors of the proposed territory to be taken from the county. In addition, the county clerk shall randomly select signatures on each sheet or section of the petition and compare them with the signatures of the electors as they appear on the registration records of the office. If all of the randomly selected signatures appear to be genuine, the number of signatures of registered electors on the sheet or section may be certified without further comparison of signatures. If any of the randomly selected signatures

do not appear to be genuine, all signatures on that sheet or section must be compared with the registration records of the office.

History: En. Sec. 2, Ch. 226, L. 1919; re-en. Sec. 4393, R.C.M. 1921; re-en. Sec. 4393, R.C.M. 1935; amd. Sec. 7, Ch. 406, L. 1973; R.C.M. 1947, 16-504(part); amd. Sec. 7, Ch. 742, L. 1985; (2)En. Sec. 8, Ch. 742, L. 1985.

7-2-2208. Role of board of county commissioners — intercounty communication. (1) A board of county commissioners receiving a petition pursuant to 7-2-2205 shall be empowered and have jurisdiction to do and perform all acts provided for in this part for each of the several counties from which any proposed territory is to be taken and shall direct that a certified copy of all orders and proceedings had before such board shall be certified by the county clerk to the board of each of the several counties from which any territory is taken by the proposed new county.

(2) All officers of any such county shall comply with the orders of the board of county commissioners in the same manner as if said order had been duly made by the board of each respective county from which territory is proposed to be taken.

History: En. Sec. 2, Ch. 226, L. 1919; re-en. Sec. 4393, R.C.M. 1921; re-en. Sec. 4393, R.C.M. 1935; amd. Sec. 7, Ch. 406, L. 1973; R.C.M. 1947, 16-504(part).

7-2-2209. Hearing and notice on petition. (1) Upon the filing of such petition or petitions and affidavits with the clerk of the board of county commissioners, said clerk shall forthwith fix a date to hear the proof of the petitions and of any opponents thereto, which date must be not later than 30 days after the filing of such petition with the clerk of said board.

(2) The county clerk shall also, at the same time, designate a newspaper of general circulation published in the old counties but not within the proposed new county and also a newspaper of general circulation published within the boundaries of the proposed new county, if there be such, in which the county clerk shall order and cause to be published, at least once a week for 2 weeks preceding the date fixed for such hearing, a notice in substantially the following form:

NOTICE

Notice is hereby given that a petition has been presented to the board of county commissioners of .... County (naming the county represented by the board of county commissioners with which said petition was filed), praying for the formation of a new county out of portions of .... County and .... County (naming the county or counties of which it is proposed to form the new county), and that said petition will be heard by the board of county commissioners at its place of meeting (designating the city or town and the day and hour of the meeting to be so held), when and where all persons interested may appear and oppose the granting of said petition and make any objections thereto.

Dated .... at ...., Montana.

...., County Clerk

History: En. Sec. 2, Ch. 226, L. 1919; re-en. Sec. 4393, R.C.M. 1921; re-en. Sec. 4393, R.C.M. 1935; amd. Sec. 7, Ch. 406, L. 1973; R.C.M. 1947, 16-504(part); amd. Sec. 1, Ch. 220, L. 1985.

7-2-2210. Repealed. Sec. 19, Ch. 742, L. 1985.

History: En. Sec. 2, Ch. 226, L. 1919; re-en. Sec. 4393, R.C.M. 1921; re-en. Sec. 4393, R.C.M. 1935; amd. Sec. 7, Ch. 406, L. 1973; R.C.M. 1947, 16-504(part).

7-2-2211. Hearing on petition — protest. (1) At the time fixed for the hearing, the board of county commissioners shall hear the petitioners and any opponents and protestants upon the petition or protests filed on or before the time fixed for the hearing. The board may adjourn the hearing from time to time, but not for more than 10 days after the time fixed for the hearing, and shall receive the proof to establish or controvert the facts set forth in the petition.

(2) (a) No petition, protest, or petition for the exclusion of territory may be considered unless it is filed at least 1 day before the time fixed for the hearing.

(b) A petition for the exclusion of territory shall contain the names of not less than 50% of the registered electors of any territory to be excluded.

(c) All such territory being excluded must be in one block containing an area of not less than 36 square miles and be totally within one county and contiguous thereto.

(3) No withdrawals of signatures to the original petition for the creation of a proposed county shall be filed or considered which have not been filed with the county clerk on or before the date fixed for the hearing. No withdrawals of any signatures from the petition for the exclusion of territory may be received or considered which are not filed within 5 days after the filing of the petition for such exclusion of territory.

History: En. Sec. 2, Ch. 226, L. 1919; re-en. Sec. 4393, R.C.M. 1921; re-en. Sec. 4393, R.C.M. 1935; amd. Sec. 7, Ch. 406, L. 1973; R.C.M. 1947, 16-504(3); amd. Sec. 3, Ch. 250, L. 1979; amd. Sec. 265, Ch. 571, L. 1979.

7-2-2212. Exclusions and additions of territory upon petition. (1) Except as provided in subsection (3), on final hearing, the board of commissioners, upon petition of not less than 50% of the registered electors (as shown by the official registration records on the day of the filing of the petition) of any territory lying within the proposed new county and contiguous to the boundary line of the proposed new county and of the old county from which such territory is proposed to be taken and lying entirely within the single old county and described in the petition, asking that this territory not be included within the proposed new county, must make such changes in the proposed boundaries as will exclude the territory from the new county and shall establish and define the boundaries. Petitions for exclusion shall be disposed of in the order in which they are filed with the clerk of the board.

(2) Except as provided in subsection (3), on final hearing, the board, upon petition of not less than 50% of the registered electors of any territory lying outside the proposed new county and contiguous to the boundary line of the proposed new county and of the old county or counties from which such territory is proposed to be taken, asking that this territory be included within the proposed new county, must make such changes in the proposed boundaries as will include such territory in the new county and shall establish and define the boundaries.

(3) (a) The segregation of the territory from any old county or counties may not leave the county or counties with less than $12 million of assessed valuation, based upon the last assessment roll.

(b) No change or changes so made may result in reducing the valuation of the proposed new county to less than an assessed valuation of $10 million, inclusive of all assessed valuation.

(c) No change may be made which leaves the territory so excluded separate and apart from and without the county of which it was formerly a part.

(4) On final determination of boundaries, no changes in the boundaries originally proposed may be made except as prayed for in the petition or petitions or to correct clerical errors or uncertainties.

History: En. Sec. 2, Ch. 226, L. 1919; re-en. Sec. 4393, R.C.M. 1921; re-en. Sec. 4393, R.C.M. 1935; amd. Sec. 7, Ch. 406, L. 1973; R.C.M. 1947, 16-504(5); amd. Sec. 4, Ch. 250, L. 1979; amd. Sec. 266, Ch. 571, L. 1979.

7-2-2213. Resolution of board of county commissioners. The board of county commissioners, on the final hearing of the petition or petitions, shall, by a resolution entered on its minutes, determine:

(1) the boundaries of the proposed new county, and the boundaries determined by the board must be the boundaries of the proposed new county if it is created as provided in this part;

(2) whether the petition contains the genuine signatures of at least 50% of the registered electors of the proposed new county as required in this part or, in cases where separate petitions are presented from portions of two or more existing counties as required in this part, whether each petition is signed by at least 50% of the registered electors of that portion of each of the existing counties that is proposed to be taken into the proposed new county;

(3) whether any line of the proposed new county passes within 15 miles of the courthouse situated at the county seat of any county proposed to be divided, except as otherwise provided;

(4) whether the proposed new county and affected existing counties meet the limitations contained in 7-2-2202;

(5) the class to which the proposed new county will belong after its creation and the name of the proposed new county as stated in the petition; and

(6) whether the area embraced within the proposed new county will be reasonably compact.

History: En. Sec. 2, Ch. 226, L. 1919; re-en. Sec. 4393, R.C.M. 1921; re-en. Sec. 4393, R.C.M. 1935; amd. Sec. 7, Ch. 406, L. 1973; R.C.M. 1947, 16-504(4); amd. Sec. 267, Ch. 571, L. 1979; amd. Sec. 7, Ch. 16, L. 1991.

Cross-References

Classes of counties, 7-1-2111.

7-2-2214. Repealed. Sec. 63, Ch. 16, L. 1991.

History: En. Sec. 3, Ch. 226, L. 1919; re-en. Sec. 4394, R.C.M. 1921; re-en. Sec. 4394, R.C.M. 1935; amd. Sec. 8, Ch. 406, L. 1973; R.C.M. 1947, 16-505(1); amd. Sec. 268, Ch. 571, L. 1979.

7-2-2215. Election on question of creating new county — proclamation and notice. (1) Within 2 weeks after its determination of the truth of the allegations of the petition, the board of county commissioners shall order and give notice of an election to be held for the purpose of determining whether the territory proposed to be taken from the county is to be established and organized into a new or enlarged county, for the election of officers, and for the location of a county seat if the vote at the election is in favor of the establishment and organization of a new county formed from a portion of one existing county or from portions of two or more existing counties.

(2) The question of determining whether the proposed territory is taken from the county and added to the proposed new county must be included on the ballot for the next regular or primary election scheduled not less than 60 days after the date of the order and notice.

(3) All registered electors of the county are entitled to vote at the election. Registration and transfers of registration must be made and must close in the manner and at a time provided by law for registration and transfers of registration for a general election in Montana.

(4) If the proposed new county is an existing county to be enlarged by territory taken from the county in which the petition was filed, the board of county commissioners of the proposed new county shall hold an election in the manner described in subsections (1) through (3).

History: En. Sec. 3, Ch. 226, L. 1919; re-en. Sec. 4394, R.C.M. 1921; re-en. Sec. 4394, R.C.M. 1935; amd. Sec. 8, Ch. 406, L. 1973; R.C.M. 1947, 16-505(part); amd. Sec. 269, Ch. 571, L. 1979; amd. Sec. 9, Ch. 742, L. 1985; amd. Sec. 1, Ch. 387, L. 1995.

Compiler's Comments

1995 Amendment: Chapter 387 in (1), near beginning after "give", deleted "proclamation and" and after "held" deleted "on a specified day, not less than 60 days thereafter"; in (2) substituted "regular or primary election" for "countywide primary, general, or school election" and near end substituted "order" for "proclamation"; and made minor changes in style.

Cross-References

Registration of electors, Title 13, ch. 2, part 2.

Transfer of registration, Title 13, ch. 2, part 5.

7-2-2216. Establishment of election precincts. The board of county commissioners of the county in which the petition was filed shall also, if necessary for the purpose of the election provided for in 7-2-2215(1), change the boundaries of the election precincts in the old county to make the same conform to the boundaries of the proposed new county, provided that the boundary lines of no such precinct shall extend beyond the boundary lines of the then-existing county in which it is located and from which the territory is proposed to be taken.

History: En. Sec. 3, Ch. 226, L. 1919; re-en. Sec. 4394, R.C.M. 1921; re-en. Sec. 4394, R.C.M. 1935; amd. Sec. 8, Ch. 406, L. 1973; R.C.M. 1947, 16-505(part); amd. Sec. 10, Ch. 742, L. 1985.

Cross-References

Election precincts, Title 13, ch. 3.

7-2-2217. Appointment of election officials. The board of county commissioners of the county concerned shall appoint election judges to act at the election provided for in 7-2-2215(1) or 7-2-2215(4) and to be paid by the board.

History: En. Sec. 3, Ch. 226, L. 1919; re-en. Sec. 4394, R.C.M. 1921; re-en. Sec. 4394, R.C.M. 1935; amd. Sec. 8, Ch. 406, L. 1973; R.C.M. 1947, 16-505(part); amd. Sec. 270, Ch. 571, L. 1979; amd. Sec. 11, Ch. 742, L. 1985.

Cross-References

Election judges, Title 13, ch. 4.

7-2-2218. Form of ballot. (1) If the proposed new county is to be formed from one county, or from portions of two or more existing counties, the ballot shall be in the following form:

(a) proclamation and notice required by 7-2-2215 shall require the electors to cast ballots which shall contain the words "For the new county of .... (giving the name of the proposed new county) — Yes" and "For the new county of .... (giving the name of the proposed new county) — No".

(b) The ballots shall also contain the names of individuals to be voted for to fill the various elective offices designated in the proclamation for counties of the class to which the proposed county will belong, as determined by the board of county commissioners, as herein otherwise provided.

(c) There shall also be printed upon the ballot the words "For the county seat" and the names of all cities or towns which may have filed with the election administrator a petition, signed by at least 25 registered electors, nominating any city or town within the proposed new county for the county seat. The elector shall designate his choice for county seat by marking a cross (X) opposite the name of the city or town for which he desires to cast his ballot.

(2) If the proposed new county is to be an existing county enlarged by territory taken from one or more other counties, the proclamation and notice required by 7-2-2215(1) shall require the electors to cast ballots which shall contain the legal description of the territory to be taken from the county in which the election is held, together with any name or names for the territory that may be in common use, and the words "For the territory described (or commonly known as ....) to be detached from .... County and added to .... County — Yes" and "For the territory described (or commonly known as ....) to be detached from .... County and added to .... County — No".

History: En. Sec. 3, Ch. 226, L. 1919; re-en. Sec. 4394, R.C.M. 1921; re-en. Sec. 4394, R.C.M. 1935; amd. Sec. 8, Ch. 406, L. 1973; R.C.M. 1947, 16-505(part); amd. Sec. 271, Ch. 571, L. 1979; amd. Sec. 12, Ch. 742, L. 1985.

7-2-2219. Conduct of election. (1) (a) The board issuing the proclamation and notice of election pursuant to 7-2-2215 shall cause the county election administrator to furnish to the election judges of each precinct in the proposed new county all election supplies and equipment necessary to conduct the election and which are not specifically directed to be furnished by the election administrator of another county or counties.

(b) The election administrator of each county from which territory is taken for the proposed new county shall, not less than 5 days before the date of the election, furnish for each precinct within the proposed new county a precinct register for the precincts of the proposed new county which are within their respective counties.

(2) The elections provided for in 7-2-2215 shall be governed and controlled by the general election laws of the state, so far as the same are applicable and except as otherwise provided herein. The provisions of the election laws relating to preparation, printing, and distribution of sample ballots, except the provisions of these laws relating to primary elections in this state, apply to any election provided for in this part. All returns of an election shall be made to and canvassed by the board of county commissioners calling the election.

(3) All nominations of candidates for offices required to be filled at the election shall be made in the manner provided by law for the nomination of candidates by petition.

History: En. Sec. 3, Ch. 226, L. 1919; re-en. Sec. 4394, R.C.M. 1921; re-en. Sec. 4394, R.C.M. 1935; amd. Sec. 8, Ch. 406, L. 1973; R.C.M. 1947, 16-505(part); amd. Sec. 5, Ch. 250, L. 1979; amd. Sec. 272, Ch. 571, L. 1979; amd. Sec. 13, Ch. 742, L. 1985.

Cross-References

Elections, Title 13.

7-2-2220. Cost of election. The expense of said election shall be paid by the county calling such election, and any other county affected thereby shall pay its proportion thereof as provided in 7-2-2244.

History: En. Sec. 7, Ch. 226, L. 1919; re-en. Sec. 4398, R.C.M. 1921; re-en. Sec. 4398, R.C.M. 1935; R.C.M. 1947, 16-511(part).

7-2-2221. Determination of county seat — temporary county seat. (1) If the proposed new county is to be formed from one county or from portions of two or more existing counties, the question of the election of the county seat is hereby provided to be submitted to the qualified electors of the proposed new county at the election provided for in 7-2-2215(1), and the majority of all the votes cast therefor shall determine the election thereon.

(2) (a) In case any city or town fails to receive a majority of all the votes cast, then the city or town receiving the highest number of all votes cast shall be designated as the temporary county seat. The temporary county seat selected upon the organization of such county shall remain as such county seat until the permanent county seat shall be established as provided by law.

(b) In case any city or town is not the choice of the election for the county seat by a majority of all the votes cast, the question of choice between the two cities or towns for which the highest number of votes shall have been cast shall be submitted in like manner to the qualified electors at the next general election thereafter.

(c) When the county seat shall have been selected as herein provided, it shall not thereafter be changed except in the manner provided by law.

(3) If the proposed new county is to be an existing county enlarged by territory taken from one or more other counties, the question of the election of the county seat may not be submitted to the electors at the election provided for in 7-2-2215.

History: Ap. p. Sec. 3, Ch. 226, L. 1919; re-en. Sec. 4394, R.C.M. 1921; re-en. Sec. 4394, R.C.M. 1935; amd. Sec. 8, Ch. 406, L. 1973; Sec. 16-505, R.C.M. 1947; Ap. p. Sec. 1, Ch. 16, Ex. L. 1919; re-en. Sec. 4392, R.C.M. 1921; re-en. Sec. 4392, R.C.M. 1935; Sec. 16-503, R.C.M. 1947; R.C.M. 1947, 16-503(part), 16-505(part); amd. Sec. 14, Ch. 742, L. 1985.

Cross-References

Removal of county seat, Title 7, ch. 2, part 26.

7-2-2222. Effect of election — resolution by county commissioners. (1) If, upon the canvass of the votes cast at the election, it appears that more than 50% of the votes cast by those voting in an election under 7-2-2215(1) in the county, by those voting in the same election in the territory proposed to be taken from the county, and by those voting in an election held under 7-2-2215(4) are affirmative, the board of county commissioners shall, by a resolution entered upon its minutes, declare the new or enlarged county duly formed and created as a county of this state, of the class to which the same belongs and under the name of .... County, and, if appropriate, that the city or town receiving the highest number of votes cast at the election for county seat shall be the county seat of the county until removed in the manner provided by law and designate and declare the individuals receiving, respectively, the highest number of votes for the several offices to be filled at the election to be duly elected to the offices.

(2) However, if upon such canvass it appears that more than 50% of the votes cast on the issue by those voting in the county, or by those voting in the territory proposed to be taken from the county, or by those voting in an election held under 7-2-2215(4) are negative, the board canvassing the vote as provided herein shall pass a resolution in accordance therewith, and thereupon the proceedings relating to division of such county or counties shall cease. No other proceedings in relation to any other division of the old county or counties shall be instituted for at least 4 years after such determination.

History: En. Sec. 4, Ch. 226, L. 1919; re-en. Sec. 4395, R.C.M. 1921; re-en. Sec. 4395, R.C.M. 1935; amd. Sec. 9, Ch. 406, L. 1973; R.C.M. 1947, 16-506(part); amd. Sec. 273, Ch. 571, L. 1979; amd. Sec. 15, Ch. 742, L. 1985.

Cross-References

Removal of county seat, Title 7, ch. 2, part 26.

Election canvass, Title 13, ch. 15.

7-2-2223. Procedure to complete creation of county. (1) The board of county commissioners shall immediately file a copy of its resolution, authorized by 7-2-2222(1) and duly certified, together with a legal description of the new boundaries of each affected county, in the office of the secretary of state. Ninety days after the date of such filing:

(a) the new county is considered to be fully created;

(b) the organization thereof is considered completed; and

(c) any new county officers, other than the county commissioners and the county clerk, are entitled to enter upon the duties of their respective offices upon qualifying in accordance with law and giving bonds for the faithful performance of their duties, as required by the laws of the state.

(2) The election administrator of the county with which the petition was filed must immediately make out and deliver to each of the individuals declared and designated to be elected a certificate of election authenticated by his signature and the seal of the county. The individuals elected members of the board and the county clerk shall, immediately upon receiving their certificates of election, assume the duties of their respective offices.

History: En. Sec. 4, Ch. 226, L. 1919; re-en. Sec. 4395, R.C.M. 1921; re-en. Sec. 4395, R.C.M. 1935; amd. Sec. 9, Ch. 406, L. 1973; R.C.M. 1947, 16-506(part); amd. Sec. 6, Ch. 250, L. 1979; amd. Sec. 274, Ch. 571, L. 1979; amd. Sec. 16, Ch. 742, L. 1985.

Cross-References

County officers — generally, Title 7, ch. 4, part 22.

7-2-2224. Offices and supplies for new county. If the new county has a new county seat under 7-2-2221, the board of county commissioners of the new county may provide a suitable place for the county officers and purchase supplies necessary for the proper conduct of the county government.

History: En. Sec. 4, Ch. 226, L. 1919; re-en. Sec. 4395, R.C.M. 1921; re-en. Sec. 4395, R.C.M. 1935; amd. Sec. 9, Ch. 406, L. 1973; R.C.M. 1947, 16-506(part); amd. Sec. 7, Ch. 250, L. 1979; amd. Sec. 17, Ch. 742, L. 1985.

7-2-2225. Officers of new county. (1) Except as provided in subsections (2) through (4), at the election provided for in 7-2-2215, there must be chosen a board of county commissioners and other county and district officers as are provided by law for counties of the class to which the new county belongs.

(2) All elected, qualified, and acting officers of the county or counties who reside within the proposed new county are considered to be officers of the new county if they file, within 5 days after the final hearing and determination of the petition for the proposed new county, with the board of county commissioners whose duty it is to call the election. Filing with the board is the officers' declaration of intent to become officers of the proposed new county. The board issuing the proclamation of the election shall omit providing for the election of any officers who have filed their declaration to continue in office.

(3) All elected, qualified, and acting justices of the peace residing within the proposed new county shall hold office as justices of the peace in the new county for the remainder of the term for which they were elected.

(4) All elected, qualified, and acting school trustees residing within the proposed new county at the time of the division of the county into school districts, as provided in Title 20, chapter 6, shall hold office as school trustees in the new county for the remainder of the term for which they were elected on qualifying as school trustees for the respective districts in which they reside, as these districts are organized.

(5) The officers elected or appointed under the provisions of this part shall perform the duties and receive the compensation provided by general law for the office to which they have been appointed or elected in the counties of the class to which the new county belongs.

History: En. Sec. 5, Ch. 226, L. 1919; re-en. Sec. 4396, R.C.M. 1921; re-en. Sec. 4396, R.C.M. 1935; amd. Sec. 1, Ch. 253, L. 1975; R.C.M. 1947, 16-507(part); amd. Sec. 8, Ch. 250, L. 1979; amd. Sec. 8, Ch. 16, L. 1991.

Cross-References

County officers — qualifications, duties, and compensation, Title 7, ch. 4.

7-2-2226. Term of office for initial officers of new county. All the officers elected at said election or appointed under this part shall hold their offices until the time provided by general law for the election and qualification of such officers in this state and until their successors are elected and qualified. For the purpose of determining the term of office of such officers, the years said officers are to hold office are to be computed from and including the first Monday after January 1 following the preceding general election.

History: En. Sec. 4, Ch. 226, L. 1919; re-en. Sec. 4395, R.C.M. 1921; re-en. Sec. 4395, R.C.M. 1935; amd. Sec. 9, Ch. 406, L. 1973; R.C.M. 1947, 16-506(part).

Cross-References

General election dates, 13-1-104.

7-2-2227. Qualification, oath of office, and bond. (1) Each person elected or appointed to fill an office of such new county under the provisions of this part shall qualify in the manner provided by law for such officer, except as otherwise provided, and shall enter upon the discharge of the duties of his office within such time as herein provided after the receipt of the certificate of his election.

(2) Each of such officers may take the oath of office before any officer authorized by the laws of Montana to administer oaths.

(3) The bond of any officer from which a bond is required shall be approved by any judge of the district court of the district to which such new county is attached for judicial purposes.

History: En. Sec. 5, Ch. 226, L. 1919; re-en. Sec. 4396, R.C.M. 1921; re-en. Sec. 4396, R.C.M. 1935; amd. Sec. 1, Ch. 253, L. 1975; R.C.M. 1947, 16-507(part).

Cross-References

County officers — generally — qualifications, Title 7, ch. 4.

Filing oath of office, 7-4-101.

Official bonds of county officers, 7-4-2212.

7-2-2228. Judicial district for new county. Said new county, when created and organized in pursuance of the provisions of this part, shall be attached to such judicial district as may be designated by the governor of Montana, in a proclamation to be issued by him designating such new county as attached to the particular judicial district for judicial purposes.

History: En. Sec. 5, Ch. 226, L. 1919; re-en. Sec. 4396, R.C.M. 1921; re-en. Sec. 4396, R.C.M. 1935; amd. Sec. 1, Ch. 253, L. 1975; R.C.M. 1947, 16-507(part).

Cross-References

Judicial districts defined, 3-5-101.

7-2-2229 through 7-2-2240 reserved.

7-2-2241. Commission to determine and adjust indebtedness and assessments for old and new counties. (1) It shall be the duty of the persons elected to or continuing to hold the office of county commissioner of said new county to meet at the county seat thereof within 5 days after all of them shall have qualified, and upon organization of said board of county commissioners, it shall notify the governor of the state of the organization of said county. Thereupon, it shall be the duty of the governor to appoint three persons, one of whom shall be a resident and a taxpayer within the new county and no two of whom shall be from any one county, to form and be a board of commissioners.

(2) The proceedings required in 7-2-2244 through 7-2-2246 to be taken in the ascertainment and adjustment of property rights and debts shall be had and taken as between said new county and each of the counties from which territory is taken to form said new county in the manner and at the ratio provided in 7-2-2244 through 7-2-2246.

History: (1)En. Sec. 6, Ch. 226, L. 1919; re-en. Sec. 4397, R.C.M. 1921; re-en. Sec. 4397, R.C.M. 1935; Sec. 16-510, R.C.M. 1947; (2)En. Sec. 7, Ch. 226, L. 1919; re-en. Sec. 4398, R.C.M. 1921; re-en. Sec. 4398, R.C.M. 1935; Sec. 16-511, R.C.M. 1947; R.C.M. 1947, 16-510(part), 16-511(part).

7-2-2242. Conduct of business by commission. (1) The commissioners provided for in 7-2-2241 shall, within 10 days after the notice of the appointment, meet at the county seat of the new county and organize by electing from their number a chairman and also by electing a secretary, who must not be a member of said commission. Thereafter, such commission may meet at such place or places as it may select. A majority of such commissioners shall constitute a quorum for the transaction of business.

(2) (a) Said commission shall have power to compel by citation or subpoena, signed by their president and secretary, the attendance of such persons and the production of such books and papers before said commission as may be required in the performance of the duties imposed by this part, except that the official records of any county or counties from which said new county was formed shall in no case be taken away from the county seat of said county.

(b) It shall be the duty of the sheriff of any county to execute in his county all lawful orders and citations of the said commission, and for any services so performed, the sheriff shall be allowed the same fees as are allowed to him for services in civil actions.

(c) All witnesses attending before said commission shall be entitled to the same compensation and mileage as is allowed to witnesses in courts of record. No witness shall be excused from attendance at the time and place mentioned in said order or citation by reason of the failure of the officer making such service to tender to such witness his fees and mileage in advance.

History: En. Sec. 6, Ch. 226, L. 1919; re-en. Sec. 4397, R.C.M. 1921; re-en. Sec. 4397, R.C.M. 1935; R.C.M. 1947, 16-510(part).

Cross-References

Sheriff's fees for civil actions, 7-32-2141.

Subpoenas, Title 26, ch. 2, part 1.

Compensation and mileage for witnesses, Title 26, ch. 2, part 5.

7-2-2243. Compensation of commission members. Members of the board of commissioners provided for under 7-2-2241 shall receive a compensation of not to exceed $25 per day for every day they are actually employed under the provisions of this part. All of which expenses, together with the reasonable expenses of stationery, postage, and incidental expenses, shall be borne in equal proportions by the counties affected by such division, including said new county. The amounts payable by each county shall be paid by the treasurers of the respective counties after the same shall have been presented to and allowed by the board of county commissioners as is provided by law for claims against any county.

History: En. Sec. 8, Ch. 226, L. 1919; re-en. Sec. 4399, R.C.M. 1921; re-en. Sec. 4399, R.C.M. 1935; R.C.M. 1947, 16-512; amd. Sec. 18, Ch. 742, L. 1985.

7-2-2244. Role of commission. (1) (a) Said board of commissioners shall, immediately after its organization:

(i) ascertain the costs of the election held hereunder and apportion the same pro rata among each of the counties from which territory was taken to form such new county;

(ii) ascertain the indebtedness of each county from which territory was taken to form the new county as the same existed at the time when the result of the election was declared by the board of county commissioners as hereinbefore provided;

(iii) ascertain the total value of all property at the time belonging to each of said counties from which territory was taken and situated within the limits of said old counties, respectively; and

(iv) ascertain the assessed value of all property in each of the original old counties from which territory was so taken, according to the last-completed assessment made for said county, and also the assessed value, under the same assessment, of all property within the territory of the new county which shall have been taken from the old county or counties from which said new county was formed.

(b) In the determination of the value of county property, all buildings and their furniture, real estate, road tools, machinery, and all steel bridges which may have been constructed and in use for a period less than 10 years shall be taken into consideration by the commissioners.

(2) They shall then find the difference between the amount of the indebtedness of the old county and the value of the property belonging to the old county at the date of the declaration of the result of said election, as hereinbefore provided, and if such indebtedness exceeds the value of such property belonging to the old county, the new county shall pay to the old county a due proportion thereof, to be determined as follows: as said assessed value of the property in the old county is to the assessed value of the property in the territory to be incorporated by this part within the new county from said old county, so is the amount of said excess to the amount to be paid by said new county to said old county.

History: En. Sec. 7, Ch. 226, L. 1919; re-en. Sec. 4398, R.C.M. 1921; re-en. Sec. 4398, R.C.M. 1935; R.C.M. 1947, 16-511(part).

7-2-2245. Commission to certify information to county commissioners. Said board of commissioners shall certify forthwith to the board of county commissioners of the new county and the old counties thereby affected the amount constituting the due proportion of said excess payable by such new county to each of them and also the value of any property belonging to each old county at the time when said division took effect, as hereinbefore provided, which is situated in the new county.

History: En. Sec. 7, Ch. 226, L. 1919; re-en. Sec. 4398, R.C.M. 1921; re-en. Sec. 4398, R.C.M. 1935; R.C.M. 1947, 16-511(part).

7-2-2246. Settlement between counties following adjustment of indebtedness. (1) The sum of said ascertained value of the property referred to in 7-2-2245 added to the ascertained proportion of the excess referred to in 7-2-2245 which the new county is to pay the old county and its proportion of the expense of said election, as aforesaid, shall be an indebtedness from the new county to the old county, and the property situated, as aforesaid, in the new county shall upon settlement therefor as provided in this part, become the property of the new county, and the old county shall pay the entire indebtedness against it.

(2) If, upon the settlement between the old and the new counties, as herein provided for, the new county shall be found to be indebted to the old county or either of the old counties, the money necessary to pay said indebtedness shall be raised by a tax levied upon the property contained in said new county and said new county shall pay the same. Such payment by said new county may be made in not more than three equal annual payments or by funds to be derived from the sale of bonds of said new county, as may be determined by a resolution of the board of county commissioners of said new county adopted within 1 year after the receipt of the statement from the board of commissioners, as aforesaid, of the amount or amounts due from it.

(3) If the value of the property belonging to the old county exceeds the indebtedness of the old county, then the old county shall pay to the new county a due proportion of such excess, which proportion shall be determined by the board of commissioners and shall be paid by the old county to the new county in the same manner and subject to the same conditions herein provided for payment by the new county to the old county when the indebtedness of the old county exceeds the value of the property in the old county.

History: En. Sec. 7, Ch. 226, L. 1919; re-en. Sec. 4398, R.C.M. 1921; re-en. Sec. 4398, R.C.M. 1935; R.C.M. 1947, 16-511(part).

7-2-2247 through 7-2-2250 reserved.

7-2-2251. Collection of delinquent taxes. Delinquent taxes due the old county against property situated in the new county shall be transcribed in and collected by the new county.

History: En. Sec. 7, Ch. 226, L. 1919; re-en. Sec. 4398, R.C.M. 1921; re-en. Sec. 4398, R.C.M. 1935; R.C.M. 1947, 16-511(part).

Cross-References

Collection of property taxes, Title 15, ch. 16.

7-2-2252. Assessment and collection of taxes for new county. (1) After the creation of a new county, its officers shall complete all proceedings necessary for the assessment or collection of the state and county taxes for the then-current year.

(2) (a) All acts and steps taken by the officers of the old county or counties prior to the creation of the new county are considered as having been performed by the officers of the new county for the benefit of the new county. Upon the creation of the new county, it shall be the duty of the officers of the old county or counties to immediately execute and deliver to the board of county commissioners of the new county copies of all assessments or other proceedings relative to the assessment and collection of the current state and county taxes on property in the new county. Such copies shall be filed with the respective officers of the new county who would have the custody of the same if the proceedings had been originally had in the new county. Such certified copies are considered as originals in the new county, and all proceedings therein recited are considered as original proceedings in the new county and shall have the same effect as if the proceedings therein stated had been had at the proper time and in the proper manner by the respective officials of the new county.

(b) The officials of the new county shall proceed with the assessment and collection of the taxes as if the proceedings originally had in the old county or counties had been originally had in the new county.

History: En. Sec. 9, Ch. 226, L. 1919; re-en. Sec. 4400, R.C.M. 1921; re-en. Sec. 4400, R.C.M. 1935; R.C.M. 1947, 16-513; amd. Sec. 9, Ch. 250, L. 1979.

7-2-2253. Procedure to transfer money to school and road funds. (1) The county superintendent of schools of an old county shall furnish the county superintendent of schools of the new county with a certification of the average number belonging (ANB) in the different school districts in the territory set apart to form the new county and shall certify to the board of county commissioners of the old county the amount due. The board of the old county shall order a warrant drawn on the treasury of the old county for all the money that is or may be due by apportionment or otherwise to the different school districts embraced in the new county and taken from the old county.

(2) The county treasurer shall certify to the county commissioners of an old county the amount due in the different road funds. The county commissioners shall order a warrant drawn on the treasury of the old county in favor of the new county for all money that is or may be due by apportionment or otherwise to the different road and district funds in the territory set apart to form the new county and taken from the old county, which amounts shall be properly credited in both counties.

(3) Whenever in the formation of a new county a road or school district has been divided, the board of county commissioners shall by resolution direct the treasurer to transfer the proper proportionate amount of the money remaining in the fund of such district to the treasurer of the new county.

History: En. Sec. 10, Ch. 226, L. 1919; re-en. Sec. 4401, R.C.M. 1921; re-en. Sec. 4401, R.C.M. 1935; amd. Sec. 1, Ch. 137, L. 1973; R.C.M. 1947, 16-514; amd. Sec. 10, Ch. 250, L. 1979.

7-2-2254. Transfer and transcription of records. (1) The board of county commissioners of any new county must provide suitable books and have transcribed from the records of the old county or counties all such parts thereof as relate to or affect property situated in the new county or the title thereof.

(2) All chattel mortgages, renewals of chattel mortgages, articles of incorporation, contract notes, sheriff certificates of sale, liens, and original affidavits of registration which may affect or relate to property or persons situated within the new county shall be delivered by the county clerk of the old county to the county clerk of the new county and shall be preserved by the county clerk of the new county as permanent files of the new county.

History: En. Sec. 11, Ch. 226, L. 1919; re-en. Sec. 4402, R.C.M. 1921; amd. Sec. 1, Ch. 75, L. 1925; re-en. Sec. 4402, R.C.M. 1935; R.C.M. 1947, 16-515(part); amd. Sec. 11, Ch. 250, L. 1979.

7-2-2255. Transfer of court files and actions. (1) The files of all actions in the office of the clerk of the district court of the old county, whether reduced to judgment or pending, for the recovery of the possession of, quieting the title to, or the enforcement of liens upon real estate lying wholly in the new county or any other actions affecting real estate lying wholly in the new county shall be delivered by the clerk of the district court of the old county to the clerk of the district court of the new county to be kept and preserved by him as permanent files of such new county, to the end that only the minutes and other entries in books kept by the clerk of the district court need be transcribed.

(2) All actions pending in the district court of the old county or counties for the recovery of the possession of quieting title to or the enforcement of liens upon real estate lying wholly in the new county or any other actions affecting real estate lying wholly in the new county shall, forthwith upon the delivery of the files in said action to the clerk of the district court of the new county as provided in subsection (1), be transferred to the district court in which the new county may be attached for judicial purposes and thereafter shall be subject to the same laws as if said action had been originally brought in the district court of the new county.

History: (1)En. Sec. 11, Ch. 226, L. 1919; re-en. Sec. 4402, R.C.M. 1921; amd. Sec. 1, Ch. 75, L. 1925; re-en. Sec. 4402, R.C.M. 1935; Sec. 16-515, R.C.M. 1947; (2)En. Sec. 12, Ch. 226, L. 1919; re-en. Sec. 4403, R.C.M. 1921; amd. Sec. 2, Ch. 75, L. 1925; re-en. Sec. 4403, R.C.M. 1935; Sec. 16-516, R.C.M. 1947; R.C.M. 1947, 16-515(part), 16-516.

7-2-2256. Publication by posting of notice. Whenever in this part publication of any notice is provided for and no newspaper of general circulation is published within the territory in which said notice is required to be published, notice shall be given by posting copies of such notice in at least 10 public places in such territory for the same length of time said notice was required to be published.

History: En. Sec. 13, Ch. 226, L. 1919; re-en. Sec. 4404, R.C.M. 1921; re-en. Sec. 4404, R.C.M. 1935; R.C.M. 1947, 16-517.

Part 23

Organization of New Counties Created by Legislation

7-2-2301. Meeting and organization of board of county commissioners upon creation of new county by legislature. Whenever a county is created in this state by legislative enactment, it shall be the duty of the persons appointed to the office of county commissioner of such county by the act creating it to meet at some place in the county, to be agreed upon by a majority of said county commissioners, within 15 days after the passage of the act creating the county and then and there to organize as a board of county commissioners by electing one of their number chairman.

History: En. Sec. 1, Ch. 135, L. 1911; re-en. Sec. 4378, R.C.M. 1921; re-en. Sec. 4378, R.C.M. 1935; R.C.M. 1947, 16-401(part).

7-2-2302. Role of county clerk of county created by legislature. (1) The individual appointed to the office of county clerk in the bill creating the county shall be notified in writing, by the county commissioners or some one of them, of the time and place of the meeting required by 7-2-2301. He must attend the meeting and act as the clerk thereof and keep a record of the proceedings.

(2) If no individual is appointed to the office of county clerk by the act creating the county, the commissioners shall at the meeting select some individual qualified to hold the office of county clerk to act as clerk of the meeting.

(3) The individual appointed county clerk shall also serve as election administrator.

History: En. Sec. 1, Ch. 135, L. 1911; re-en. Sec. 4378, R.C.M. 1921; re-en. Sec. 4378, R.C.M. 1935; R.C.M. 1947, 16-401(part); amd. Sec. 275, Ch. 571, L. 1979.

7-2-2303. Applicability of general laws to new counties and officers. All laws of general nature applicable to the several counties of Montana and to the officers thereof and to their powers and duties shall be applicable to a new county and the officers thereof from and after the creation of the county, except as otherwise provided in this part or the act creating the county.

History: En. Sec. 11, Ch. 135, L. 1911; re-en. Sec. 4388, R.C.M. 1921; re-en. Sec. 4388, R.C.M. 1935; R.C.M. 1947, 16-411.

7-2-2304 through 7-2-2310 reserved.

7-2-2311. Designation of temporary county seat. (1) Immediately after the organization of the board of county commissioners, as provided in 7-2-2301, said board shall, by a resolution spread upon the minutes of its proceedings, designate some place within said county as and to be the temporary county seat until the permanent county seat shall be located as provided in this part.

(2) In the event of a majority of the county commissioners failing to agree upon the location of the temporary county seat, each county commissioner shall write the name of the place he favors as the temporary county seat on a slip of paper. Said slips shall be enclosed in envelopes of the same size, color, and texture and shall be deposited in a box or other suitable receptacle; and the county clerk, in the presence of said commissioners, shall draw out one of the

slips. Thereupon, the county commissioners shall, by resolution spread upon the minutes, declare the place named on the slip so drawn by the county clerk to be the temporary county seat of said county.

(3) The place so designated shall be the temporary county seat of said county until the permanent county seat is located by the electors of said county at the general election to be held on the first Tuesday after the first Monday of November of the next even-numbered year after the creation of the county or at a special election as hereinafter provided.

History: En. Sec. 2, Ch. 135, L. 1911; re-en. Sec. 4379, R.C.M. 1921; re-en. Sec. 4379, R.C.M. 1935; amd. Sec. 3, Ch. 406, L. 1973; R.C.M. 1947, 16-402(1), (2).

7-2-2312. Election on question of locating permanent county seat. (1) Except as provided in subsection (2), at the first general election after the creation of the county, it shall be the duty of the board of county commissioners and election administrator to have separate official ballots printed and distributed for the use of the electors at said election. The ballots shall be in the form and contain the same matter as the ballots provided for in 7-2-2316, and the provisions of 7-2-2316(4) and 7-2-2318 shall apply to and govern the manner of voting and of canvassing said ballots. The board shall declare the result of such election and the location of the permanent county seat, and said county seat shall be located in the manner and according to the provisions of 7-2-2318.

(2) (a) At any time within 6 months after the passage of an act creating a new county, a petition or petitions may be filed with the election administrator of such county asking the board to submit the question of the location of the permanent county seat to the electors of the county at a special election to be called and held in the manner provided in this part.

(b) Said petition or petitions must contain in the aggregate the names of at least 100 qualified electors whose names also appear as registered electors in some registration district established and existing in the territory embraced in the new county at the last general election held therein. The petition or petitions, when filed with the board, must also have certificates attached thereto from the election administrator of the county in which the individual or individuals signing the petition resided before the creation of the new county, certifying that the names of the individuals signing said petition or petitions appear in the registration books of his county containing the names of the electors registered in the last general election in the districts now embraced in the new county.

History: En. Sec. 2, Ch. 135, L. 1911; re-en. Sec. 4379, R.C.M. 1921; re-en. Sec. 4379, R.C.M. 1935; amd. Sec. 3, Ch. 406, L. 1973; R.C.M. 1947, 16-402(3) thru (5); amd. Sec. 276, Ch. 571, L. 1979.

7-2-2313. Procedure to hold special election. (1) Upon filing the petition or petitions, duly certified as provided in 7-2-2312, with the election administrator of the new county, he must immediately notify the chairman of the board of county commissioners who, upon receipt of such notice, must call a meeting of the board, to be held within 10 days after the filing of the petition, for the purpose of considering the same. If the board at such meeting finds that said petition conforms to the requirements of and is in accordance with the provisions of 7-2-2312, it shall at the meeting, by a resolution entered in its minutes, call a special election of the registered electors of said county for the purpose of voting upon the question of the location of the permanent county seat.

(2) The election shall be held on Tuesday and not less than 75 or more than 90 days after the date of calling the same. The board must issue an election proclamation containing a statement of the time of the election and the question to be submitted. A copy of this proclamation must be published in some newspaper printed in the county, if any, and posted at each place of election at least 10 days before the election.

History: En. Sec. 3, Ch. 135, L. 1911; re-en. Sec. 4380, R.C.M. 1921; re-en. Sec. 4380, R.C.M. 1935; R.C.M. 1947, 16-403; amd. Sec. 277, Ch. 571, L. 1979; amd. Sec. 2, Ch. 250, L. 1985.

7-2-2314. Establishment of precincts and polling places — appointment of deputy registrars. (1) At the meeting of the board at which the special election is called for the purpose of locating the permanent county seat, the board shall, by resolution entered in its minutes, divide the county into precincts and establish polling places in the manner provided by law.

(2) It must also, at the same session of the board, appoint deputy registrars for the several precincts established by it, who must possess the qualifications required by law for deputy registrars.

History: En. Sec. 4, Ch. 135, L. 1911; re-en. Sec. 4381, R.C.M. 1921; re-en. Sec. 4381, R.C.M. 1935; R.C.M. 1947, 16-404; amd. Sec. 278, Ch. 571, L. 1979.

Cross-References

Election precincts, Title 13, ch. 3.

7-2-2315. Appointment of election judges. (1) At the same meeting of the board of county commissioners at which the special election for the location of the permanent county seat is called, the board shall appoint three judges of election for each precinct in the county, who shall act as the judges at the election. The judges appointed for the special election must qualify as required by the general election law.

(2) It shall be the duty of the election administrator to have printed and distributed to the election judges the necessary ballots, the form of which shall be as provided in 7-2-2316 and 7-2-2319, and also supply the judges with the necessary supplies required to hold such election in the manner provided by law.

History: En. Secs. 6, 7, Ch. 135, L. 1911; re-en. Secs. 4383, 4384, R.C.M. 1921; re-en. Secs. 4383, 4384, R.C.M. 1935; R.C.M. 1947, 16-406, 16-407(part); amd. Sec. 279, Ch. 471, L. 1979.

Cross-References

Election judges, Title 13, ch. 4.

Ballots, Title 13, ch. 12, part 2.

7-2-2316. Form of ballot. (1) The form of the ballot used at such elections shall be as follows: there shall be a stub across the top of each ballot and separated therefrom by a perforated line.

(2) Upon the face of the stub there shall be printed the following instructions:

"To vote this ballot the elector will write in the blank space on the ballot the name of the town or place at which he desires the permanent county seat to be located."

(3) The ballot below the perforated line shall be in the following form:

"For the permanent county seat of .... County (here insert name of county) my choice is ...."

(4) When the name of a town or place in a county shall be so inserted in the blank space on such ballot by an elector and the ballot has been cast as provided by law, the same shall be deemed a vote for the designated town or place as the location of the permanent county seat of said county.

History: (1) thru (3)En. Sec. 8, Ch. 135, L. 1911; re-en. Sec. 4385, R.C.M. 1921; re-en. Sec. 4385, R.C.M. 1935; Sec. 16-408, R.C.M. 1947; (4)En. Sec. 9, Ch. 135, L. 1911; re-en. Sec. 4386, R.C.M. 1921; re-en. Sec. 4386, R.C.M. 1935; Sec. 16-409, R.C.M. 1947; R.C.M. 1947, 16-408(part), 16-409(part); amd. Sec. 379, Ch. 571, L. 1979.

Cross-References

Ballots, Title 13, ch. 12, part 2.

7-2-2317. Conduct of election. The polls must be opened and closed, the voting done, the ballots counted, returns made to the board of county commissioners, and all other matters connected with said election carried on and conducted in accordance with and as provided by the general election laws of this state. Any person who from any cause is unable to write may have one of the judges in the presence of another judge write his choice on the ballot.

History: Ap. p. Sec. 7, Ch. 135, L. 1911; re-en. Sec. 4384, R.C.M. 1921; re-en. Sec. 4384, R.C.M. 1935; Sec. 16-407, R.C.M. 1947; Ap. p. Sec. 8, Ch. 135, L. 1911; re-en. Sec. 4385, R.C.M. 1921; re-en. Sec. 4385, R.C.M. 1935; Sec. 16-408, R.C.M. 1947; R.C.M. 1947, 16-407(part), 16-408(part).

Cross-References

General voting and canvassing procedures, Title 13, ch. 12 through 17.

7-2-2318. Canvass of returns — declaration of results. (1) The board of county commissioners of said county shall canvass the returns of said election in the manner provided by law for the canvassing of election returns.

(2) Upon such canvassing of returns, the town or place found to have received a majority of all votes cast on such question shall be declared by the board the permanent county seat of the county. The order declaring the result of such election shall be entered of record in the minutes of the proceedings of the board by the county clerk.

(3) From the date of the declaration of the results of the election, the town or place selected shall be and remain, until lawfully changed in the manner provided by law, the permanent county seat of such county. Within 10 days after the declaration of the result of such election, all records and county offices of the county, if located elsewhere, must be moved to and remain at the place declared the permanent county seat.

History: En. Sec. 9, Ch. 135, L. 1911; re-en. Sec. 4386, R.C.M. 1921; re-en. Sec. 4386, R.C.M. 1935; R.C.M. 1947, 16-409(part).

Cross-References

Canvass of returns, Title 13, ch. 15.

7-2-2319. Procedure in case of failure to select permanent county seat. (1) If no town or place receives a majority of all votes cast on such question, then the town or place receiving the highest number of votes shall be declared by the board and immediately become the temporary county seat of the county, and at the next general election the two towns or places receiving the greatest number of votes at said first election shall be the candidates for the permanent county seat.

(2) (a) At said next general election, the county clerk shall have separate ballots in the form provided for in 7-2-2316 printed and distributed as provided by law, containing the names of said candidates for the permanent county seat.

(b) On the stub of such ballots shall be printed the following instructions: "To vote this ballot the elector will place an X in the square before the name of the town he intends to vote for."

(c) The form of such ballots below the perforated line shall be as follows:

☐ for the permanent county seat

☐ for the permanent county seat.

(3) Of said towns or places the one receiving a majority of all the votes cast on such question shall be declared the permanent county seat. The board of county commissioners must canvass the returns and declare the result and the county seat must be located in accordance with the provisions of this part.

History: En. Sec. 10, Ch. 135, L. 1911; re-en. Sec. 4387, R.C.M. 1921; re-en. Sec. 4387, R.C.M. 1935; R.C.M. 1947, 16-410.

Part 24

Transfer and Transcription of Records, Court Actions, and Jury Lists for New Counties

7-2-2401. Transfer of certain records. (1) Any new county shall be entitled to all records, maps, plats, and charts of any old county, any part of whose territory is included in such new county, which records, maps, plats, or charts relate to the classification of lands for taxation purposes and apply exclusively to territory included in such new county. Such records, maps, plats, and charts shall be delivered by the officer or board of such old county to the corresponding officer or board of such new county upon proper receipt therefor and shall be made and become a part of the records of such new county, to all intents and purposes the same as if such records, maps, plats, and charts had been originally prepared and made by such new county.

(2) If any portion of the cost of preparing such records, maps, plats, or charts remains unpaid, said new county shall pay its proportionate share of such cost as may be determined by the board of commissioners of the old county.

History: En. Sec. 1, Ch. 201, L. 1921; re-en. Sec. 4421, R.C.M. 1921; re-en. Sec. 4421, R.C.M. 1935; R.C.M. 1947, 16-614(part).

7-2-2402. Transcription of records. (1) Any county or counties of Montana that shall be formed from portions of another county shall be entitled to have the county records affecting or relating to any and all property situated in the segregated county transcribed from the books of the original county and made a part of the records of the segregated county.

(2) Except as provided in 7-2-2401, it shall be the duty of the county commissioners of any county formed from part of another county to have so much of the records of the original county as relates to the property situated within the segregated county transcribed, as hereinafter provided.

History: (1)En. Sec. 1, p. 217, L. 1893; re-en. Sec. 4166, Pol. C. 1895; re-en. Sec. 2860, Rev. C. 1907; re-en. Sec. 4408, R.C.M. 1921; re-en. Sec. 4408, R.C.M. 1935; Sec. 16-601, R.C.M. 1947; (2)En. Sec. 2, p. 217, L. 1893; re-en. Sec. 4167, Pol. C. 1895; re-en. Sec. 2861, Rev. C. 1907; re-en. Sec. 4409, R.C.M. 1921; re-en. Sec. 4409, R.C.M. 1935; Sec. 16-602, R.C.M. 1947; R.C.M. 1947, 16-601, 16-602.

7-2-2403. Authority to contract for transcription service. Said county commissioners shall have full power and authority to contract for transcribing the records relating to all property situated within the boundaries of the segregated county, and for that purpose the person or persons engaged in the work of transcribing such records shall have access to all records of the county or counties from which segregated.

History: En. Sec. 3, p. 217, L. 1893; re-en. Sec. 4168, Pol. C. 1895; re-en. Sec. 2862, Rev. C. 1907; re-en. Sec. 4410, R.C.M. 1921; re-en. Sec. 4410, R.C.M. 1935; R.C.M. 1947, 16-603.

7-2-2404. Payment for transcription of records. Payment for transcribing such records shall be made by the county contracting therefor and by a warrant or warrants payable out of the general fund of such county.

History: En. Sec. 4, p. 217, L. 1893; re-en. Sec. 4169, Pol. C. 1895; re-en. Sec. 2863, Rev. C. 1907; re-en. Sec. 4411, R.C.M. 1921; re-en. Sec. 4411, R.C.M. 1935; R.C.M. 1947, 16-604.

7-2-2405. Certification of accuracy of transcription. (1) When the transcript of such records provided for herein shall be completed and approved by the county commissioners of such county, they shall be delivered to the county clerk and recorder of the county from which such records were taken. It shall be the duty of such county clerk and recorder to compare the records so transcribed with the original records as the same appear on the record books of the said original county. The county clerk and recorder to whom the transcript shall be delivered for comparison shall certify under oath that the transcribed records are full, complete, and exact copies of the original records.

(2) The county clerk and recorder shall be entitled to $6 per day for his time actually spent in comparing the said records, to be paid out of the general fund of the county requiring such comparison and certificate.

History: En. Sec. 5, p. 218, L. 1893; re-en. Sec. 4170, Pol. C. 1895; re-en. Sec. 2864, Rev. C. 1907; re-en. Sec. 4412, R.C.M. 1921; re-en. Sec. 4412, R.C.M. 1935; R.C.M. 1947, 16-605.

7-2-2406. Filing of transcribed records. All records so transcribed, when certified to as being full, complete, and correct, shall be delivered to the county clerk and recorder of the segregated county, shall be filed in the office of the county clerk and recorder of such segregated county, and shall thereupon become and be a part of the records of such county.

History: En. Sec. 6, p. 218, L. 1893; re-en. Sec. 4171, Pol. C. 1895; re-en. Sec. 2865, Rev. C. 1907; re-en. Sec. 4413, R.C.M. 1921; re-en. Sec. 4413, R.C.M. 1935; R.C.M. 1947, 16-606.

7-2-2407. Legal effect of transcribed records. A certified copy of the records so transcribed and filed in the office of the county clerk and recorder of any segregated county may be introduced in evidence and shall have the same force and effect as certified copies of original records.

History: En. Sec. 7, p. 218, L. 1893; re-en. Sec. 4172, Pol. C. 1895; re-en. Sec. 2866, Rev. C. 1907; re-en. Sec. 4414, R.C.M. 1921; re-en. Sec. 4414, R.C.M. 1935; R.C.M. 1947, 16-607.

7-2-2408 through 7-2-2410 reserved.

7-2-2411. Transfer of court actions affecting real property. (1) In all counties created out of any other county wherever there has been an action or proceeding begun affecting any real property situated within such new county, whether such action has been prosecuted to judgment or not, upon a written motion being filed by any person or persons interested in such real property so affected by such action or proceeding requesting the transfer of the files and papers and records of such action or proceeding to the office of the clerk of the district court of the new county wherein such real property is situated, it shall be the duty of the judge of the district court in which said action or proceeding was originally begun to order that a transfer of all the files and papers of such action or proceeding be made to the office of the clerk of the district court of the new county in which such real property is situated. When such an order of transfer is made, it shall be the duty of the clerk of the district court wherein such action or proceeding was originally instituted to transmit all of the files and papers in such action or proceeding, together with a certified copy of all minutes of the court relating to such action or proceeding, to the clerk of such new county in which the real property, the subject matter of such action or proceeding, is situated.

(2) Said clerk of the district court of the new county in which said property is situated shall, upon the receipt of such files and papers and certified copies of the minutes of the court, file said papers in his office as transferred files from the original county and shall enter and transcribe upon his records any final judgment or decree or order contained in such files or papers or records so transferred.

(3) Upon the receipt and filing of the files and papers in any action or proceeding transferred to a new county in accordance with the provisions of this section, the district court of such new county in which such files and papers shall have been transferred shall have the same jurisdiction with reference to said real property for the enforcement of any decree, judgment, or order that may have been entered therein or for such other proceedings as may be necessary in such action or proceeding as the district court had in the county wherein such action or proceeding was originally begun.

History: (1), (2)En. Sec. 1, Ch. 20, L. 1907; re-en. Sec. 2867, Rev. C. 1907; re-en. Sec. 4415, R.C.M. 1921; re-en. Sec. 4415, R.C.M. 1935; Sec. 16-608 R.C.M. 1947; (3)En. Sec. 2, Ch. 20, L. 1907; Sec. 2868, Rev. C. 1907; re-en. Sec. 4416, R.C.M. 1921; re-en. Sec. 4416, R.C.M. 1935; Sec. 16-609, R.C.M. 1947; R.C.M. 1947, 16-608, 16-609.

7-2-2412. Fees for transfer of court records. (1) The clerk of the district court wherein such action or proceeding was originally begun shall be entitled to receive, for transferring such files and papers and certified copies of the minutes and records entered in connection with such action or proceeding, no other fee than the rate of 20 cents per folio for copies of minutes made by him and 50 cents for certificate fee.

(2) The clerk of the district court of the new county to which such files and papers may be transferred in accordance with the provisions of 7-2-2411 shall not be entitled to any fees for the filing of such transferred records, but for the filing of any papers that may be filed thereafter in connection with such action or proceeding or for the issuance of any writs or other papers, such clerk shall be entitled to charge the same fees as now provided by law.

History: **En. Sec. 3, Ch. 20, L. 1907; Sec. 2869, Rev. C. 1907; re-en. Sec. 4417, R.C.M. 1921; re-en. Sec. 4417, R.C.M. 1935; R.C.M. 1947, 16-610.**

Cross-References

Fees of Clerk of District Court, 25-1-201.

7-2-2413 through 7-2-2420 reserved.

7-2-2421. Preparation of jury list for new county. Whenever a new county has been created out of territory formerly embraced in any existing county or counties of the state, the jury list for such new county for the current year and until the regular jury commission for such new county shall certify the new jury list for the succeeding year, in accordance with the provisions of Title 3, chapter 15, part 4 shall be as follows.

History: **En. Sec. 1, Ch. 129, L. 1919; re-en. Sec. 4422, R.C.M. 1921; re-en. Sec. 4422, R.C.M. 1935; R.C.M. 1947, 16-622.**

7-2-2422. Certification of list of names. (1) The clerk of court of the county from which said new county may be segregated or, in the event of such new county being segregated from two or more counties, the clerks of court of each of such counties shall take the names of such persons as appear upon the jury list for such year, which may have been certified to him or to them by the jury commission or commissions of his or their respective county or counties to be residents of the territory embraced in such new county, and shall certify the same to the clerk of court of the new county.

(2) Such names shall then constitute the jury list for such new county for the period as aforesaid.

(3) Such new list shall be made and certified by such clerk or clerks of the existing county or counties as soon after the creation of such new county as may be practicable and in any event within 5 days after request therefor shall be made by the clerk of the district court of the new county.

History: **(1), (2)En. Sec. 2, Ch. 129, L. 1919; re-en. Sec. 4423, R.C.M. 1921; re-en. Sec. 4423, R.C.M. 1935; Sec. 16-623, R.C.M. 1947; (3)En. Sec. 3, Ch. 129, L. 1919; re-en. Sec. 4424, R.C.M. 1921; re-en. Sec. 4424, R.C.M. 1935; Sec. 16-624, R.C.M. 1947; R.C.M. 1947, 16-623, 16-624.**

7-2-2423. Correction of jury lists for old counties. The clerk or clerks of the district court of the county or counties from which such new county has been created shall, after the creation of such new county, remove from the list of jurors and jury boxes of his or their county or counties the names of all persons upon the list which may have been filed with him or them by the jury commission who may appear to him or them to be residents of the new county and so certified by him as aforesaid.

History: **En. Sec. 4, Ch. 129, L. 1919; re-en. Sec. 4425, R.C.M. 1921; re-en. Sec. 4425, R.C.M. 1935; R.C.M. 1947, 16-625.**

7-2-2424. Role of clerk of court in new county. The clerk of court of the new county shall then file and prepare his jury list and boxes in accordance with the general law pertaining to the duties of clerks of court with relation to jury lists and boxes.

History: **En. Sec. 5, Ch. 129, L. 1919; re-en. Sec. 4426, R.C.M. 1921; re-en. Sec. 4426, R.C.M. 1935; R.C.M. 1947, 16-626.**

Part 25

Change of Name of County

Part Cross-References

Name of county, 7-1-2102.

7-2-2501. Authorization to change name of county. The name, designation, appellation, cognomen, or title of any county in this state may be changed to any other name, designation, appellation, cognomen, or title as provided in this part.

History: En. Sec. 1, Ch. 113, L. 1917; re-en. Sec. 4427, R.C.M. 1921; re-en. Sec. 4427, R.C.M. 1935; R.C.M. 1947, 16-701.

7-2-2502. Petition to change county name. (1) Petitions for change of names must be heard and determined by the district court of the county whose name is sought to be changed.

(2) A petition for the change of the name, designation, appellation, cognomen, or title of any county in this state must be signed by a number of the legal voters who are taxpayers in such county equal, at least, to 25% of the whole number of votes cast for the office of governor of Montana in such county at the gubernatorial election next preceding the circulation of such petition. The signatures, in each instance, must be the genuine personal signature of the voter attaching his name to the petition. The petition must specify the present name of the county, the name proposed, and the reason or reasons for such change of name and must be entitled in and addressed to the appropriate district court.

History: (1)En. Sec. 2, Ch. 113, L. 1917; re-en. Sec. 4428, R.C.M. 1921; re-en. Sec. 4428, R.C.M. 1935; Sec. 16-702, R.C.M. 1947; (2)En. Sec. 3, Ch. 113, L. 1917; re-en. Sec. 4429, R.C.M. 1921; re-en. Sec. 4429, R.C.M. 1935; Sec. 16-703, R.C.M. 1947; R.C.M. 1947, 16-702, 16-703.

7-2-2503. Form of petition. (1) The following shall be substantially the form of petition for any change of name of a county as provided in this part:

In the district court of the .... judicial district of the state of Montana, in and for the county of .....

Petition for the change of the
name of .... County

To the honorable district court of the .... judicial district of the state of Montana, in and for the county of .....

We, the undersigned legal voters of the county of ...., state of Montana, respectfully petition the honorable district court aforesaid that the name of .... County, Montana, be changed to the name of .... County, Montana.

The reasons for the proposed change of name as aforesaid are as follows (here set out reasons):

We further petition this honorable court to appoint a time for the hearing of this petition and of such objections thereto as may be filed before such date.

Each voter whose signature is hereby affixed hereby certifies that he has personally signed this petition and that the residence, post-office address, and voting precinct of such signer are correctly written after his signature appearing hereon.

Name	Residence	P.O. Address	Voting Precinct

....

Numbered lines for names.

(2) Every such sheet for petitioner's signature shall be attached to a full and correct copy of the petition, and such petition may be filed with the clerk of the district court aforesaid in sections for convenience in handling.

History: En. Sec. 4, Ch. 113, L. 1917; re-en. Sec. 4430, R.C.M. 1921; re-en. Sec. 4430, R.C.M. 1935; R.C.M. 1947, 16-704.

7-2-2504. Verification of petition signatures — county clerk's certification. (1) The county clerk of the county in which said petition shall be signed shall compare the signatures of the voters signing the same with their signatures on the registration books and blanks on file in his office for the preceding general election. The county clerk shall not retain in his possession any such petition or any part thereof for a longer period than 2 days for the first 200 signatures thereon and 1 additional day for each 200 additional signatures or fraction thereof on the sheets presented to him. At the expiration of such time, he shall file the same with the clerk of the aforesaid district court, with his certificate attached thereto as provided in subsection (2).

(2) After comparing the signatures, the county clerk shall attach to the sheets of said petition containing such signatures, his certificate to the aforesaid district court, substantially as follows:

State of Montana, County of ....

To the honorable district court of the .... judicial district of the state of Montana, in and for the county of .....

I, ..., county clerk of the county of ...., hereby certify that I have compared the signatures on (number of sheets) of the petition for change of name attached hereto with the signatures of said voters as they appear on the registration books and blanks in my office; and I believe that the signatures of (names of signers), numbering (number of genuine signatures), are genuine. I further certify that the number of genuine signatures hereto attached equals at least 25% of the whole number of votes cast for the office of governor of Montana in said county at the gubernatorial election next preceding the circulation of this petition.

...., County Clerk
(Seal) By ....
Deputy ....

(3) The forms herein given are not mandatory, and if substantially followed in any petition, it shall be sufficient, disregarding clerical and merely technical errors.

History: En. Sec. 5, Ch. 113, L. 1917; re-en. Sec. 4431, R.C.M. 1921; re-en. Sec. 4431, R.C.M. 1935; R.C.M. 1947, 16-705.

7-2-2505. Publication and posting of copies of petition. Upon the filing of the petition as aforesaid, the clerk of the district court, upon the receipt of the cost from any voter in the county, shall cause a copy of the same to be published for 4 successive weeks in some newspaper published in the county, and a copy of such petition must be posted at three of the most public places in the county for a like period by the clerk of the district court. Proofs must be made of such publication and posting before the petition can be considered and before a date for the hearing thereon may be fixed by the court.

History: En. Sec. 6, Ch. 113, L. 1917; re-en. Sec. 4432, R.C.M. 1921; re-en. Sec. 4432, R.C.M. 1935; R.C.M. 1947, 16-706.

7-2-2506. Court hearing on petition — court order. Such petition must be heard at such time as the court or judge may appoint, subject to the provisions of 7-2-2505. Objections may be filed in the office of the clerk of said court at any time before such date by any person who can, in such objections, show to the court or judge good reason against such change of name. On the hearing, the court or judge may examine on oath any of the petitioners, remonstrants, or other persons touching the petition and may make an order changing the name if there appears any reason, benefit, or advantage for such change or may dismiss the petition as to the court or judge may seem right or proper.

History: En. Sec. 7, Ch. 113, L. 1917; re-en. Sec. 4433, R.C.M. 1921; re-en. Sec. 4433, R.C.M. 1935; R.C.M. 1947, 16-707.

7-2-2507. Transmittal to secretary of state of order to change name. (1) Immediately upon the rendition of any decree changing the name of a county as provided in this part, the clerk of the district court of said county shall transmit, by registered or certified mail, a certified copy of said decree, showing the date of its rendition, to the secretary of state of Montana.

(2) The secretary of state shall file the same and record the same in an appropriate book.

History: En. Sec. 8, Ch. 113, L. 1917; re-en. Sec. 4434, R.C.M. 1921; re-en. Sec. 4434, R.C.M. 1935; R.C.M. 1947, 16-708.

7-2-2508. Procedure to effectuate name change in records and other papers. (1) From and after the rendition of the decree, the official records in the custody of the several county officers shall be styled and designated, as in each instance may be proper, with the new name of the county as provided by the decree. All printed blanks and forms, all printed matter whatsoever, and all written records of such county shall be styled and designated with the new name. All the official records, blanks, forms, books, and papers belonging to such county before the entry of such decree shall be styled and designated with the new name as provided in the decree.

(2) For the convenience of searchers of public records and in order to prevent confusion with respect to land titles or in any other respect, it shall be proper to style, designate, or refer to such records, books, papers, blanks, and forms as were in existence before the rendition of such decree in the following manner:

New Name (Formerly) Old Name of County

....

History: En. Sec. 9, Ch. 113, L. 1917; re-en. Sec. 4435, R.C.M. 1921; re-en. Sec. 4435, R.C.M. 1935; R.C.M. 1947, 16-709.

7-2-2509. Effect of name change on property and legal rights. (1) All public records and property of the county existing under the former name shall be and become the public records and property of the county of the new name. In all conveyances, indentures, instruments, decrees of courts, and other records where the former name of the county occurs, said former name shall thereafter be construed to mean the new name of the county.

(2) All writs and processes in force and existence under the former name of the county shall thereafter be the writs and processes of and appertaining to the county under its new name. All bonds, undertakings, and sureties, alive and in existence and running to or standing in the former name of the county, shall have the same force, effect, and relation to the county under its new name as they had to the county under its former name. All suits, actions, and proceedings in law or equity pending in the district court of the county under its former name or in any of the other courts of said county shall continue in full force and be in existence in the court in which they were pending under the new name of the county and shall not be in anywise abated or affected by the change of name.

History: En. Sec. 10, Ch. 113, L. 1917; re-en. Sec. 4436, R.C.M. 1921; re-en. Sec. 4436, R.C.M. 1935; R.C.M. 1947, 16-710.

7-2-2510. Effect of name change on vested rights and existing laws. (1) The change of name provided for in this part shall not impair or work a forfeiture or alteration of any vested rights.

(2) All laws of a general or special nature applicable to the county under its former name shall thereafter apply with equal force and effect to the county under its new name.

History: En. Sec. 11, Ch. 113, L. 1917; re-en. Sec. 4437, R.C.M. 1921; re-en. Sec. 4437, R.C.M. 1935; R.C.M. 1947, 16-711.

Cross-References

No law impairing obligation of contracts, Art. II, sec. 31, Mont. Const.

No retrospective laws, Art. XIII, sec. 1, Mont. Const.

7-2-2511. Effect of name change on indebtedness, obligations, and contracts. (1) All indebtedness and obligations of the county, whether bonded or otherwise, shall be assumed by and become the indebtedness of the county under its new name. All bonds issued by the county under its former name, outstanding and unpaid at the time of the rendition of the decree, shall be assumed by and become due from and paid by the county under its new name.

(2) All contracts and obligations, express or implied, unfulfilled by the county at the date of the rendition of the decree shall be assumed and discharged by the county under its new name.

History: En. Sec. 12, Ch. 113, L. 1917; re-en. Sec. 4438, R.C.M. 1921; re-en. Sec. 4438, R.C.M. 1935; R.C.M. 1947, 16-712; amd. Sec. 12, Ch. 250, L. 1979.

7-2-2512. Effect of name change on district court. The terms of the district court in and for said county, as theretofore established by the court or a judge thereof under the former name of the county, shall become the terms of said court for the county under its new name and shall be held as stated, in and for said county under its former name.

History: En. Sec. 13, Ch. 113, L. 1917; re-en. Sec. 4439, R.C.M. 1921; re-en. Sec. 4439, R.C.M. 1935; R.C.M. 1947, 16-713.

7-2-2513. Effect of name change on officers. Persons who are, at the date of the rendition of the decree, the county, township, and district officers or officials and members of the legislature of the county under its former name shall remain in office and shall thereafter be the county, township, district, and legislative officials of the county under its new name and, as such, shall be entitled to the same salaries or compensation during the remainder of their terms of office that they were entitled to receive from the county under its former name.

History: **En. Sec. 14, Ch. 113, L. 1917; re-en. Sec. 4440, R.C.M. 1921; re-en. Sec. 4440, R.C.M. 1935; R.C.M. 1947, 16-714(part).**

7-2-2514. Effect of name change on county boundaries. No change of name shall be so construed as to alter or modify the boundaries of the county as the same existed and were established under the former name of the county, but such boundaries shall be and remain the same until changed according to law.

History: **En. Sec. 14, Ch. 113, L. 1917; re-en. Sec. 4440, R.C.M. 1921; re-en. Sec. 4440, R.C.M. 1935; R.C.M. 1947, 16-714(part).**

Part 26

Removal of County Seat

Part Cross-References

Constitutional requirement for vote on transfer of county seat, Art. XI, sec. 2, Mont. Const.

Qualifications for county seat, 7-2-2103.

Removal of county seat after enemy attack, 10-3-608.

7-2-2601. Petition to remove county seat. (1) Whenever the inhabitants of any county of this state desire to remove the county seat of a county from the place where it is fixed by law or otherwise to another place, they may present a petition to the board of county commissioners of their county, praying such removal, such place to be named in the petition, and that an election be held to determine whether or not such removal must be made.

(2) The petition to remove the county seat of the county from the place where it is fixed by law to another place must be presented at least 60 days prior to any action thereon being taken by the board of county commissioners. Action on said petition by the board must be had at a regular meeting of said board.

History: **En. Sec. 4157, Pol. C. 1895; amd. Sec. 1, p. 145, L. 1901; re-en. Sec. 2851, Rev. C. 1907; amd. Sec. 1, Ch. 62, L. 1915; amd. Sec. 1, Ch. 10, L. 1919; re-en. Sec. 4369, R.C.M. 1921; Cal. Pol. C. Sec. 3976; re-en. Sec. 4369, R.C.M. 1935; R.C.M. 1947, 16-301(part).**

7-2-2602. Filing of petition — notice and hearing. (1) A petition for removal of a county seat must be filed with the county clerk.

(2) The county clerk, immediately upon the filing of said petition, must cause to be printed in every newspaper published within said county a notice to the effect that a petition praying for the removal of said county seat has been filed with the county clerk, that said petition is open to the inspection of any and all persons interested therein, and that said petition will be presented to the board of county commissioners at its next regular session for action thereon.

(3) No other or additional petition than the one originally filed shall be considered by the board.

History: **En. Sec. 4157, Pol. C. 1895; amd. Sec. 1, p. 145, L. 1901; re-en. Sec. 2851, Rev. C. 1907; amd. Sec. 1, Ch. 62, L. 1915; amd. Sec. 1, Ch. 10, L. 1919; re-en. Sec. 4369, R.C.M. 1921; Cal. Pol. C. Sec. 3976; re-en. Sec. 4369, R.C.M. 1935; R.C.M. 1947, 16-301(part).**

7-2-2603. Withdrawal of name from petition. At any time on or before the date fixed for the hearing, any person having signed the original petition for the removal of the county seat may file a statement in writing with the county clerk that he desires to have his name withdrawn from such petition, provided that not more than one withdrawal shall be permitted by the same person.

History: En. Sec. 4157, Pol. C. 1895; amd. Sec. 1, p. 145, L. 1901; re-en. Sec. 2851, Rev. C. 1907; amd. Sec. 1, Ch. 62, L. 1915; amd. Sec. 1, Ch. 10, L. 1919; re-en. Sec. 4369, R.C.M. 1921; Cal. Pol. C. Sec. 3976; re-en. Sec. 4369, R.C.M. 1935; R.C.M. 1947, 16-301(part).

7-2-2604. Consideration of petition — submission to voters. (1) For the purpose of testing the sufficiency of any petition which may be presented to the county commissioners as provided in this section, the county commissioners shall compare such petition with the pollbooks in the county clerk's office constituting the returns of the last general election held in their county for the purpose of ascertaining whether such petition bears the names of at least 50% of the voters listed therein.

(2) If the petition is signed by at least 50% of the qualified electors of such county, the board of county commissioners must at the next general election submit the question of removal to the electors of the county.

(3) If such petition then shows that it has not been signed by at least 50% of the voters of the county, after deducting from the original petition the names of all persons who may have signed such original petition and who may have filed or caused to be filed with the county clerk of said county or the board, on or before the date fixed for the hearing, their statement in writing of the withdrawal of their names from the original petition, it shall be deemed insufficient and the question of the removal of the county seat shall not be submitted.

History: En. Sec. 4158, Pol. C. 1895; amd. Sec. 2, p. 146, L. 1901; re-en. Sec. 2852, Rev. C. 1907; amd. Sec. 2, Ch. 10, L. 1919; re-en. Sec. 4370, R.C.M. 1921; Cal. Pol. C. Sec. 3977; re-en. Sec. 4370, R.C.M. 1935; amd. Sec. 1, Ch. 406, L. 1973; R.C.M. 1947, 16-302.

7-2-2605. Notice and conduct of election. (1) Notice of an election for removal of a county seat, clearly stating the object, must be given and the election must be held and conducted and the returns made in all respects in the manner prescribed by law in regard to the submitting of questions to the electors of a locality under the general election law at a regular or primary election.

(2) In voting on the question, each elector must vote for the place in the county which the elector prefers by placing the mark X opposite the name of the place.

History: (1)En. Sec. 4159, Pol. C. 1895; re-en. Sec. 2853, Rev. C. 1907; re-en. Sec. 4371, R.C.M. 1921; Cal. Pol. C. Sec. 3979; re-en. Sec. 4371, R.C.M. 1935; Sec. 16-303, R.C.M. 1947; (2)En. Sec. 4160, Pol. C. 1895; re-en. Sec. 2854, Rev. C. 1907; re-en. Sec. 4372, R.C.M. 1921; Cal. Pol. C. Sec. 3980; re-en. Sec. 4372, R.C.M. 1935; Sec. 16-304, R.C.M. 1947; R.C.M. 1947, 16-303, 16-304; amd. Sec. 2, Ch. 387, L. 1995.

Compiler's Comments

1995 Amendment: Chapter 387 in (1), after "election", inserted "for removal of a county seat" and at end inserted "at a regular or primary election"; and made minor changes in style.

Cross-References

General provisions governing elections and canvasses, Title 13, ch. 12 through 17.

7-2-2606. Determination and publication of election results. (1) When the returns have been received and compared and the results ascertained by the board, if a majority of the qualified electors voting on the question have voted in favor of any particular place, the board must give notice of the results by posting notices thereof in all the election precincts of the county and by publishing a like notice in a newspaper printed in the county at least once a week for 4 weeks.

(2) In the notice provided for in this section, the place selected to be the county seat of the county must be so declared from a day specified in the notice, not more than 90 days after the election. After the day named in the notice, the place chosen is the county seat of the county.

History: (1)En. Sec. 3, p. 146, L. 1901; re-en. Sec. 2855, Rev. C. 1907; amd. Sec. 1, Ch. 27, L. 1921; re-en. Sec. 4373, R.C.M. 1921; Cal. Pol. C. Sec. 3981; re-en. Sec. 4373, R.C.M. 1935; amd. Sec. 2, Ch. 406, L. 1973; Sec. 16-305, R.C.M. 1947; (2)En. Sec. 4162, Pol. C. 1895; re-en. Sec. 2856, Rev. C. 1907; re-en. Sec. 4374, R.C.M. 1921; Cal. Pol. C. Sec. 3982, re-en. Sec. 4374, R.C.M. 1935; Sec. 16-306, R.C.M. 1947; R.C.M. 1947, 16-305, 16-306.

7-2-2607. Transmittal of election results. Whenever any election has been held as provided for in this part, the statement made by the board of county commissioners showing the result thereof must be deposited in the office of the county clerk. Whenever the board gives the notice prescribed by 7-2-2606(2), they must transmit a certified copy thereof to the secretary of state.

History: En. Sec. 4163, Pol. C. 1895; re-en. Sec. 2857, Rev. C. 1907; re-en. Sec. 4375, R.C.M. 1921; Cal. Pol. C. Sec. 3983; re-en. Sec. 4375, R.C.M. 1935; R.C.M. 1947, 16-307.

7-2-2608. Frequency of elections on question of moving county seat. (1) When an election has been held and a majority of the votes are not cast for some place other than that fixed by law as the existing county seat, no second election for the removal thereof may be held within 4 years thereafter.

(2) When the county seat of a county has been once removed by a popular vote of the people of the county, it may be again removed from time to time in the manner provided by this part.

History: (1)En. Sec. 4164, Pol. C. 1895; re-en. Sec. 2858, Rev. C. 1907; re-en. Sec. 4376, R.C.M. 1921; Cal. Pol. C. Sec. 3984; re-en. Sec. 4376, R.C.M. 1935; Sec. 16-308, R.C.M. 1947; (2)En. Sec. 4, Ch. 146, L. 1901; re-en. Sec. 2859, Rev. C. 1907; re-en. Sec. 4377, R.C.M. 1921; Cal. Pol. C. Sec. 3985; re-en. Sec. 4377, R.C.M. 1935; Sec. 16-309, R.C.M. 1947; R.C.M. 1947, 16-308, 16-309; amd. Sec. 13, Ch. 250, L. 1979.

Part 27

Abandonment and Consolidation of Counties

Part Cross-References

Election required to change county boundaries, Art. XI, sec. 2, Mont. Const.

7-2-2701. Abandonment and consolidation of counties. The organization and corporate existence of any county organized under the laws of this state may be abandoned and abolished and the territory within its boundaries may be attached to and made a part of some adjoining county in the manner provided by this part.

History: En. Sec. 1, Ch. 105, L. 1937; R.C.M. 1947, 16-4001.

7-2-2702. Petition for abandonment of county. (1) A petition may be filed with the county clerk of a county asking that the question of abandoning and abolishing the organization and corporate existence of the county and attaching its territory to and making the same a part of some adjoining county be submitted to the qualified electors of the county at an election. The petition shall state the name of the adjoining county to which the territory of the county to be abandoned and abolished shall be attached and made a part.

(2) The petition shall be signed by not less than 35% of the qualified electors of the county whose names appear upon the registration records of such county, shall contain the post-office address and voting precinct of each individual signing it, and shall state the name and address of three individuals to whom notice of the insufficiency of the petition shall be sent in the event that the petition does not have the required number of signatures of registered electors signed thereto. No person, after signing any such petition, shall be allowed or permitted to withdraw his signature or name therefrom.

History: En. Sec. 2, Ch. 105, L. 1937; R.C.M. 1947, 16-4002(part); amd. Sec. 280, Ch. 571, L. 1979.

7-2-2703. Processing of petition — certification to county commissioners. (1) It shall be the duty of the election administrator, within 30 days after the filing of the petition, to examine it and to ascertain and determine from the registration records of the county whether the petition is signed by the required number of registered electors. The election administrator may be authorized by the board of county commissioners to employ additional help in his office to assist him in the work of examining the petition, and the board shall provide for their compensation.

(2) When the examination is completed, the election administrator shall forthwith attach to the petition his certificate, properly dated and signed, showing the result of his examination. If the certificate shows that the petition is signed by the required number of registered electors, the election administrator shall immediately present the petition to the board if the board is then in session; otherwise, at its first regular meeting after the date of the certificate.

History: En. Sec. 2, Ch. 105, L. 1937; R.C.M. 1947, 16-4002(part); amd. Sec. 281, Ch. 571, L. 1979.

7-2-2704. Hearing on petition by county commissioners — notice. (1) Whenever any such petition is presented to the board of county commissioners of a county with a certificate of the election administrator attached thereto and showing that the petition has been signed by not less than 35% of the registered electors of the county whose names appear upon the registration records of the county, as provided in 7-2-2702 and 7-2-2703, the board shall, immediately upon presentation of the petition, make and enter an order in its minutes fixing a day for considering and taking final action on the petition. The date for final action shall be not less than 30 or more than 35 days after the date when the order is made.

(2) The board shall cause a notice to be published as provided in 7-1-2121 to the effect that the petition has been presented to the board asking for the abandonment and abolishment of the county and that any registered electors of the county interested therein may appear and be heard thereon.

History: En. Sec. 3, Ch. 105, L. 1937; R.C.M. 1947, 16-4003(1); amd. Sec. 282, Ch. 571, L. 1979; amd. Sec. 3, Ch. 349, L. 1985.

Cross-References

Official newspaper of county, 7-5-2411.

7-2-2705. Petition to amend proposed consolidation. (1) At any time prior to 5 days before the date fixed for consideration and final action on such petition, 50% of the registered electors residing within a particular part or portion of such county may file with the county clerk of such county a petition in writing, signed by them, praying that the part or portion of such county within which such petitioners reside shall not be attached to the county designated in the petition for abandonment but shall be attached to some other adjoining county. No person, after signing any such petition, shall be allowed or permitted to withdraw his signature or name therefrom.

(2) The petition authorized by subsection (1) shall definitely, particularly, and accurately describe the boundaries of such part or portion of said county which said petitioners desire to be attached to such other adjoining county and shall specify and name such other adjoining county to which such part or portion is to be attached if said county is abandoned and abolished.

(3) Separate and independent petitions may be filed by registered electors residing within the boundaries of separate and distinct and different parts or portions of such county, praying that, if said county is abandoned, the territory embraced within the boundaries described therein may be attached to and become parts of the same or different adjoining counties other than the county named and designated in the petition for abandonment.

History: **En. Sec. 3, Ch. 105, L. 1937; R.C.M. 1947, 16-4003(part).**

Cross-References

County boundaries, see Vol. 1, Annotations.

7-2-2706. Processing of petition to amend proposed consolidation — certification to county commissioners. Whenever any petition is filed under 7-2-2705, the election administrator shall immediately examine the same and determine from the registration records of the county whether the petition has been signed by the required number of registered electors and shall attach thereto his certificate showing the total number of registered electors residing within the boundaries described in the petition and the number thereof whose names appear on said petition and shall deliver the petition, with the certificate attached, to the board of county commissioners when the board meets to consider and take final action on the petition for abandonment.

History: **En. Sec. 3, Ch. 105, L. 1937; R.C.M. 1947, 16-4003(part); amd. Sec. 283, Ch. 571, L. 1979.**

7-2-2707. Action on petitions — resolution. (1) On the day fixed by the board for consideration and final action on such petition for abandonment, the board shall meet and examine and consider all petitions which may have been filed praying that particular parts or portions of said county, if abandoned, be attached to an adjoining county or counties other than the county named in such petition for abandonment and shall determine the sufficiency of each such petition filed and shall enter its findings with regard thereto in its minutes. Said board shall thereupon adopt a resolution, which shall be in writing and also entered in full in its minutes.

(2) Said resolution must be signed by the members of the board, and the county clerk must, within 5 days thereafter, make the certified copies of said resolution, with copy of petition or petitions attached, and transmit one copy to the governor of Montana and one copy to the county clerk of each county to which any part or portion of said county is to be attached if abandoned.

History: En. Sec. 4, Ch. 105, L. 1937; R.C.M. 1947, 16-4004(part).

7-2-2708. Form of resolution. The resolution authorized by 7-2-2707 shall be in substantially the following form:

Whereas, there has been filed with the election administrator of (name) county, Montana, a petition asking that the organization and corporate existence of the county be abandoned and abolished and its territory attached to and made a part of an adjoining county, the county of (name), Montana; and

Whereas, the petition has been presented to the board of county commissioners of (name) County, with a certificate of the election administrator of the county attached thereto showing that the petition has been signed by not less than 35% of the registered electors of the county; and

(If a petition for attaching any part or portion of the county, in case of abandonment, to an adjoining county or counties other than the county named in the petition for abandonment and found to have been signed by the required number of registered electors, insert the following for each petition:)

Whereas, there has been filed a petition signed by not less than 50% of the registered electors residing within that part or portion of the county described as (give description as contained in petition), praying that the part or portion of the county within the boundaries be attached to and made a part of the county of (name of county given in petition) if the county is abandoned.

Now, therefore, be it resolved that if (name) County shall be abandoned and abolished, the territory embraced within its boundaries shall be attached to and become part of the following: (if all to be attached to one adjoining county so state, but if parts or portions to any other county or counties, then describe the part or portion to go to each adjoining county as well as to the county named in the petition for abandonment).

Be it further resolved that the county clerk of (name) County, Montana, make copies of this resolution, each with a copy of said petition for abandonment with the signatures omitted therefrom (and copies of petitions for attaching parts or portions of said county to adjoining county or counties other than the county named in the petition for abandonment, if any were filed and found sufficient, with signatures omitted), and certify to the same and affix the seal of the county thereto and transmit one of the copies to the governor of Montana and one of the copies to the clerk of each county to which any part of the county is to be attached if abandoned.

History: En. Sec. 4, Ch. 105, L. 1937; R.C.M. 1947, 16-4004(part); amd. Sec. 284, Ch. 571, L. 1979.

7-2-2709. Election on question of abandonment and consolidation. (1) (a) Within 14 days after transmittal of the resolution provided for in 7-2-2707, the boards of county commissioners of the county in which the petition referred to in the resolution was filed and of each county designated in the resolution as a county to which any of the territory of the county, if abandoned and abolished, would be attached and made a part, shall, in a joint meeting and by joint resolution of the boards, call a special election in all affected counties to be held in conjunction with the next regular or primary election.

(b) The joint resolution shall fix a day for holding the election in the counties. If a general election will be held in the counties not less than 90 days or more than 120 days after the date of the resolution provided for in 7-2-2707, the joint resolution must direct that the question be submitted to the registered electors of the counties at the general election. The joint resolution must be filed in the office of the secretary of state, and copies of the resolution must be transmitted to the election administrator of each of the counties in which the election is to be held.

(2) At the election there must be submitted:

(a) to the registered electors of the county in which the petition was filed, the question of whether or not the county is to be abandoned and abolished and its territory attached to and made a part of the county designated and named for the purpose in the petition; and

(b) to the registered electors of each county named and designated in the resolution as a county to which a part of the territory of the county proposed to be abandoned and abolished is to be attached and made a part if the county is abandoned and abolished, the question of whether or not the part of the territory of the county, if abandoned and abolished, described in the resolution must be attached to and become a part of the county.

History: En. Sec. 5, Ch. 105, L. 1937; R.C.M. 1947, 16-4005; amd. Sec. 285, Ch. 571, L. 1979; amd. Sec. 2, Ch. 79, L. 1983; amd. Sec. 3, Ch. 387, L. 1995.

Compiler's Comments

1995 Amendment: Chapter 387 in (1)(a), at end, inserted "to be held in connection with the next regular or primary election"; in (1)(b), near beginning after "counties", deleted "which shall be not less than 90 days or more than 120 days after the date of the joint resolution calling the same"; and made minor changes in style.

7-2-2710. Procedure to hold election. (1) The election administrator of each of the counties, after receiving a copy of the election proclamation, shall present it to the board of county commissioners if the board is then in session or, if not in session, then at the first meeting held thereafter. The board of county commissioners of each of the counties shall issue the proclamations and give the notices of election which are required by the general laws of this state when questions are to be submitted to the qualified electors of a county at an election. The proclamation and notices shall include a description of the boundaries of that part of the county proposed to be abandoned and attached to and made a part of such county if the county is abandoned.

(2) The election administrator of each of the counties shall give notice of the closing of the registration books and shall cause the same to be closed at the time and in the manner provided by the general registration and election laws of this state.

(3) The election shall be held, voted, counted, and returns made and canvassed in the manner provided by the general election laws of this state.

History: En. Secs. 6, 7, Ch. 105, L. 1937; R.C.M. 1947, 16-4006, 16-4007(part); amd. Sec. 286, Ch. 571, L. 1979.

Cross-References

Notice required for special elections, 13-1-108.

7-2-2711. Form of ballot. (1) At such election the question to be submitted to the qualified electors of the county in which said petition was filed shall be as follows:

☐ FOR the abandonment and abolishment of the county of (name) and attaching the territory within its boundaries to and making the same a part of the county or counties of (name).

☐ AGAINST the abandonment and abolishment of the county of (name) and attaching the territory within its boundaries to and making the same a part of the county or counties of (name).

(2) The question to be submitted to the qualified electors of the counties designated in the resolution as the county or counties to which the territory of the county proposed to be abandoned and abolished is to be attached and made a part shall be as follows:

☐ FOR attaching to and making a part of the county of (name) a part of the territory within the boundaries of the county of (name) if the same is abandoned and abolished.

☐ AGAINST attaching to and making a part of the county of (name) a part of the territory within the boundaries of the county of (name) if the same is abandoned and abolished.

History: En. Sec. 7, Ch. 105, L. 1937; R.C.M. 1947, 16-4007(part).

7-2-2712. Canvass of returns — proclamation of results. (1) The board of county commissioners of each county, acting as a canvassing board, must, within 10 days after the holding of the election, canvass the returns of the election. Within 5 days thereafter, the election administrator of each county must make and enter in the records of the board a statement of the vote in the county and transmit to the secretary of state, by registered or certified mail, an abstract thereof, which shall be marked "election returns".

(2) Within 10 days after receiving the abstracts from all counties in which the election was held and on notice from the secretary of state, the board of state canvassers shall meet and canvass, compute, and determine the vote. The secretary of state, as secretary of the board, must make and file in his office a statement of it and transmit a copy thereof to the governor.

(3) Upon receipt of the copy, the governor shall issue a proclamation declaring the result of the election and shall file a copy of the proclamation in the office of the secretary of state and transmit a copy of the proclamation to the county clerk of each of the counties in which such election was held. Each county clerk shall file the same in his office and present the same to the board of county commissioners of his county if the board is then in session; otherwise, at the first meeting of the board after the copy has been received by the clerk.

History: En. Sec. 8, Ch. 105, L. 1937; R.C.M. 1947, 16-4008; amd. Sec. 287, Ch. 571, L. 1979.

Cross-References

Canvass of election returns, Title 13, ch. 15.

7-2-2713. Effect of election results. (1) If at the election a majority of the votes cast in the county in which the petition for abandonment was filed are cast in favor of the abandonment and abolishment of the county and if a majority of the votes in the county designated in the petition as the county to which the territory of the abandoned county shall be attached are cast in favor of attachment, then:

(a) (i) the organization and the political and corporate existence of the county in which the petition for abandonment was filed terminate;

(ii) the county is abandoned, abolished, and disincorporated and ceases to exist; and

(iii) except as provided in subsection (2) of this section, its territory is attached to and becomes a part of the counties designated in the resolution adopted under 7-2-2707; and

(b) the terms of office of each of the officers of the abandoned county and of the members of the board of county commissioners thereof terminate at midnight on the following June 30.

(2) If at the election a majority of the votes in any adjoining county named in the resolution adopted under 7-2-2707, other than the county designated in the petition for abandonment as the county to which the territory of the abandoned county shall attach, are cast against the attaching of any portion of the territory of the abandoned county to such adjoining county, then such portion of the territory described in the resolution attaches and becomes a part of the county designated in the petition for abandonment as the county to which the territory of the abandoned county attaches.

History: En. Sec. 9, Ch. 105, L. 1937; R.C.M. 1947, 16-4009; amd. Sec. 14, Ch. 250, L. 1979.

7-2-2714 through 7-2-2720 reserved.

7-2-2721. Disposition of townships. The townships of a county abandoned and abolished under this part shall be townships of the county to which the territory within such townships is attached until such time as they may be changed by the board of county commissioners of such county. If a township of such abandoned county is divided and a part attached to one and a part attached to another adjoining county, then the board of county commissioners of the county to which attached, until further order of such board, shall attach such territory to an adjoining township within such county.

History: En. Sec. 10, Ch. 105, L. 1937; amd. Sec. 6, Ch. 253, L. 1975; R.C.M. 1947, 16-4010.

7-2-2722. Disposition of property. Each county to which any part of the territory of an abandoned county is attached and made a part shall:

(1) succeed to, have, possess, and own all real estate, all improvements thereon, all tangible property, and all county highways situated within the territory of the abandoned county attached to such county and all certificates of tax sale to lands and improvements thereon situated within such territory; and

(2) have the same right and power to sell and assign such certificates and to apply for and obtain tax deeds to such lands and improvements and to sell and dispose of the same as were or would have been possessed by the abandoned county if it had not been abandoned.

History: En. Sec. 11, Ch. 105, L. 1937; R.C.M. 1947, 16-4011.

7-2-2723. Vesting of property and legal rights. The county designated in the petition for the abandonment of a county as the county to which the territory of the abandoned county shall be attached, subject to the provisions of this part, shall:

(1) succeed to, have, possess, and own all other property, assets, liens, rights, remedies, and claims of every kind owned and belonging to or possessed by the abandoned county on the date when the same ceases to exist; and

(2) have the right to demand, collect, and receive any and all money to which such abandoned county was entitled for taxes for which tax sales had not been held, for licenses, and for other demands remaining unpaid on the date when such abandoned county ceases to exist and to enforce in any manner authorized by law any and all of such rights, remedies, and claims.

History: En. Sec. 12, Ch. 105, L. 1937; R.C.M. 1947, 16-4012.

7-2-2724. Disposition of records and other papers. (1) All maps, plats, papers, documents, records, record books, indexes, and files of every kind and description belonging to an abandoned and abolished county or in the possession of any of the officers thereof on the date when such county ceases to exist shall be, immediately after such county ceases to exist, removed to the county seat of the county designated in the petition for abandonment as the county to which the territory of the abandoned and abolished county is to be attached. The same shall be delivered over to the custody of the proper officers of such county and be placed in the proper offices thereof and shall thereafter constitute the maps, plats, papers, documents, records, record books, indexes, and files of such county. The cost and expense of such transfer and removal shall be paid by warrants ordered drawn and issued by the board of county commissioners of such county against the general fund of such abandoned and abolished county.

(2) (a) If any part of an abandoned county shall be attached to and become a part of any adjoining county other than the county designated in the petition for abandonment, it shall be the duty of the board of county commissioners of the county designated in said petition for abandonment:

(i) to enter into a contract with some competent person or persons for transcribing so much of the records of said abandoned county as affects or relates to the property in that portion of the abandoned county which has been attached to such other county;

(ii) to prepare complete and proper indexes for such transcribed records; and

(iii) to transmit such transcribed records and indexes, when completed, to such other county.

(b) If portions of such abandoned county have been attached to more than one adjoining county, the board of county commissioners may enter into separate contracts for transcribing the records for each of such other counties or may enter into one contract for transcribing the records for all of such other counties.

(c) Chattel mortgages, construction and other liens, and other instruments filed but not recorded shall not be transcribed, but the original instruments shall be transmitted to such other county or counties. The cost of transcribing, indexing, and transmitting such records shall be paid by warrants drawn by the board of county commissioners letting such contracts on the general fund of the abandoned county. All of the provisions of 7-2-2405 through 7-2-2407 shall apply to such transcribed records.

History: **En. Sec. 13, Ch. 105, L. 1937; R.C.M. 1947, 16-4013.**

7-2-2725. Status of continuing contracts. Except as provided in 7-2-2726, all valid and existing contracts entered into by a county abandoned and abolished under this part which, by the terms thereof, will extend beyond the time when such county ceases to exist shall continue in full force and effect as contracts of the county designated in the petition for abandonment as the county to which the territory of the abandoned and abolished county is attached and made a part.

History: **En. Sec. 14, Ch. 105, L. 1937; R.C.M. 1947, 16-4014(part).**

Cross-References

No law impairing obligation of contracts, Art. II, sec. 31, Mont. Const.

7-2-2726. Status of printing contracts. (1) If the abandoned and abolished county has entered into a printing contract in accordance with the provisions of part 24 of chapter 5 and the contract is in full force and effect on the date when the county ceases to exist, the purchase of all supplies and printing for the county designated in the petition for abandonment as the county to which the territory of the abandoned and abolished county is attached shall be divided by the board of county commissioners of the continuing county between the contract of the abandoned county and any similar existing contract entered into by the board of the continuing county in such manner as the board considers equitable and just to the holders of both contracts until the expiration of the contract entered into by the abandoned and abolished county.

(2) When a petition is filed with the election administrator of a county for the abandonment and abolishment of the county in accordance with the provisions of 7-2-2702 and 7-2-2703, the board of county commissioners of the county may not thereafter enter into any contract under the provisions of part 24 of chapter 5 until the time has expired when the petition may be presented to the board by the county clerk as provided in 7-2-2702 and 7-2-2703.

History: **En. Sec. 14, Ch. 105, L. 1937; R.C.M. 1947, 16-4014(part); amd. Sec. 15, Ch. 250, L. 1979; amd. Sec. 288, Ch. 571, L. 1979.**

7-2-2727. Effect of abandonment on school and special districts. (1) All school districts and other special districts of an abandoned and abolished county shall continue as and be such school districts and special districts of the county to which such territory is attached and becomes a part. The members of the boards of trustees or directors of such school districts or other special districts shall continue to be the trustees and directors thereof until the terms of office for which they were elected or appointed shall expire. If any of such school districts shall bear the same numbers as school districts of the county to which the territory within the boundaries of such abandoned and abolished county is attached and made a part, the county superintendent shall either renumber the school districts of said abandoned and abolished county or shall give them such designation in addition to their numbers as will distinguish them from the districts in the county to which such territory is attached and made a part. If the territory of any school district shall be divided and parts attached to two or more counties, such school district shall be a joint school district of such counties.

(2) All funds of all school districts and of all other special districts of an abandoned and abolished county shall be transferred to and paid over to the county treasurer of the county to which the territory of such school district is attached and becomes a part and shall be accounted for by said county treasurer as the funds of such districts. If a joint school district is created, the state superintendent of public instruction shall designate the county treasurer to whom such funds are to be transferred and paid over. All taxes levied for all school funds and funds of other special districts of such abandoned and abolished county remaining unpaid at the time said county ceased to exist and all other money which would have accrued to such funds if said county had not been abandoned and abolished, when received by such county treasurer, shall be deposited to the credit of the proper school or special district funds.

History: En. Sec. 22, Ch. 105, L. 1937; R.C.M. 1947, 16-4022.

7-2-2728. Effect of abandonment on county high schools. (1) If a county high school shall have been established in any abandoned and abolished county when such county ceases to exist, such county high school shall become the high school of the district in which it is situated or located and all property, both real and personal, owned by such county or acquired for and used in connection with the maintenance and operation of such county high school shall become and be the property of such school district to be used by such school district for the maintenance and operation of such district high school. All lawful existing contracts of such county high school shall be assumed by and become the contracts of such school district. The terms of office of all trustees of such county high school shall cease and terminate at the time the existence of said abandoned and abolished county shall cease and terminate.

(2) All money in all county high school funds shall be transferred and paid over to the treasurer of the county to which the territory in which the school district succeeding to the property of the county high school is attached and made a part and used and applied as follows:

(a) Any money in any bond sinking and interest funds shall be used for the payment and interest on any unpaid and outstanding high school bonds.

(b) (i) If there shall be outstanding any high school warrants at the time such county high school ceases to exist, then all money in such county high school funds, except sinking and interest funds, shall be used for the payment of such warrants, with interest thereon.

(ii) If such money is insufficient to pay all outstanding warrants, with the interest thereon, then such warrant indebtedness shall be assumed by and become warrant indebtedness of such school district.

(c) If there be no such high school warrants outstanding, then the money in such funds shall be transferred to the high school fund of the school district which, under the provisions of this part, is to maintain such high school as a district high school.

(3) (a) All taxes levied for any sinking and interest fund for county high school bonds and remaining unpaid at the time the abandoned and abolished

county ceases to exist, when collected, shall be deposited to the credit of such fund.

(b) All taxes levied for high school purposes and remaining unpaid when such county ceases to exist and all other money which would have gone to such high school if the county had not been abandoned and abolished, when collected, shall be deposited to the proper high school funds of the district in the county to which the territory of the abandoned and abolished county has been attached and made a part.

History: **En. Sec. 23, Ch. 105, L. 1937; R.C.M. 1947, 16-4023.**

7-2-2729. Tax liability of property within abandoned county for debts of continuing county. (1) Whenever a county is abandoned and abolished and its territory is attached to and made a part of an adjoining county under the provisions of this part, none of the property situated within the boundaries of such abandoned and abolished county shall be subjected to taxation or taxed for the payment of any indebtedness of such adjoining county which may exist at the time such territory is attached to and made a part of such adjoining county.

(2) If an adjoining county to which the territory of an abandoned and abolished county is attached and made a part shall have outstanding and unpaid bonds at the time such territory is attached to and made a part of such county, such bonds shall be the indebtedness of such adjoining county. None of the property situated within the territory of the abandoned county shall be subjected to any taxes to pay the principal or interest of such bonds, but such taxes shall be levied only against the property within the boundaries of such adjoining county as the same existed before the territory of the abandoned and abolished county was attached to and made a part thereof.

History: **En. Sec. 18, Ch. 105, L. 1937; R.C.M. 1947, 16-4018(part).**

7-2-2730. Establishment of special warrant district or special funding bond district in continuing county. (1) After all warrants have been drawn and issued against the funds of such adjoining county to pay the claims and demands existing against such county on the date when the territory of such abandoned and abolished county was attached to such adjoining county, all money in the funds of such adjoining county shall be used and applied in payment of the warrants drawn against its respective funds. If such money is not sufficient to pay all of such warrants, with the interest thereon, then the board of county commissioners shall make an order creating a special warrant district and shall include within such district all of the territory of such adjoining county but shall not include therein any of the territory of such abandoned and abolished county and shall, thereafter and at the time of making levies for county purposes, levy a special tax against all taxable property in such district to pay the warrants, with interest thereon, outstanding against the funds of said county. The board may in its discretion extend such tax levy over a period of not to exceed 3 years.

(2) (a) If it shall appear to the board that it will require too large a tax levy to pay such warrant indebtedness, with interest thereon, within 3 years, such board, instead of creating a special warrant district, shall create and establish a special funding bond district and shall include within the boundaries thereof all of the territory within such adjoining county but shall not include

therein any of the territory of the abandoned and abolished county attached to such adjoining county. After all money in the several funds of said county applicable thereto has been applied in payment of such outstanding warrants and interest thereon and without submitting the question of doing so to an election, such board may issue bonds in an amount sufficient to pay and redeem all such warrants remaining outstanding, with interest thereon.

(b) Such bonds shall be issued in the name of said adjoining county and shall contain recitals to the effect that the principal and interest thereof will be paid by millage tax levies against the property situated within the boundaries of said county as the same existed before the territory of such abandoned and abolished county was attached thereto and that none of the property within the territory of such abandoned and abolished county will be subjected to such levies. Except as otherwise provided herein, said bonds shall be issued and sold and tax levies shall be fixed and made to pay the principal and interest thereof as the same becomes due in the manner provided by 7-7-107, 7-7-108, 7-7-123, 7-7-124, 7-7-2104, 7-7-2106, and parts 22 and 23 of chapter 7 and all the provisions thereof, so far as applicable thereto, shall apply to such bonds.

History: En. Sec. 18, Ch. 105, L. 1937; R.C.M. 1947, 16-4018(a), (b); amd. Sec. 5, Ch. 370, L. 1987.

7-2-2731 through 7-2-2740 reserved.

7-2-2741. Processing of claims against abandoned county. (1) All claims and demands against any abandoned and abolished county for salaries, services, wages, materials, and supplies; for all other current expenses; and for claims and demands accruing under contracts and for which said county was liable at the time it ceased to exist and which had not been approved and warrants issued therefor prior to the time it ceased to exist shall be presented to the board of county commissioners of the county designated in the petition for abandonment as the county to which its territory is attached and made a part. Except as provided in subsection (2), all such claims and demands shall be acted on by the board of such county, and warrants shall be issued in payment thereof in the same manner as though the same had been incurred by such county.

(2) All such warrants shall be drawn and issued against the proper funds of such abandoned and abolished county. No such claim or demand shall be approved or warrant issued in payment thereof if the amount of such claim or demand exceeds the unexpended balance of appropriation for such purpose contained in the budget of the abandoned and abolished county for the year in which the same was incurred.

History: En. Sec. 15, Ch. 105, L. 1937; R.C.M. 1947, 16-4015.

7-2-2742. Transfer and use of funds of abandoned county. (1) All money in each of the funds of an abandoned and abolished county shall be transferred to and paid over by the treasurer thereof to the treasurer of the county designated in the petition for abandonment as the county to which its territory is to be attached and become a part and shall be kept and maintained by such treasurer in separate funds in the name of such abandoned and abolished county and, except as provided in subsection (2), used and applied for paying warrants issued against such funds by the abandoned and abolished county prior to the time it ceased to exist and for paying warrants issued against such fund by the board of county commissioners of the county to which it is attached and becomes a part under the provisions of 7-2-2724 and 7-2-2741 and the interest on such warrants.

(2) Money in any bond sinking and interest funds of such abandoned and abolished county shall be used and applied for the sole purpose of paying the interest and principal becoming due on unpaid and outstanding bonds of such county.

History: **En. Sec. 16, Ch. 105, L. 1937; R.C.M. 1947, 16-4016(part).**

7-2-2743. Collection of taxes and other money. Taxes levied for all such funds which were delinquent on the day when such county ceased to exist and for which tax sales had not been held and all licenses and other money owing to such county at such time shall be collected by the treasurer of the county designated in the petition for abandonment as the county to which its territory is to be attached and become a part and placed in and deposited to the credit of the funds of such abandoned and abolished county to which the same properly belong.

History: **En. Sec. 16, Ch. 105, L. 1937; R.C.M. 1947, 16-4016(part).**

7-2-2744. Transfer of money when claims against fund satisfied. (1) When all warrants issued and outstanding against any fund of an abandoned and abolished county, with the interest thereon, have been fully paid, any balance standing to the credit of such fund shall be transferred to any other fund or funds of such county in which there is not sufficient money to pay the warrants issued and outstanding against the same, with interest thereon.

(2) If, after payment of all warrants issued against all such funds, balances remain in any thereof, the same shall be transferred to and become a part of the bond sinking and interest funds of such abandoned county.

History: **En. Sec. 16, Ch. 105, L. 1937; R.C.M. 1947, 16-4016(part).**

7-2-2745. Procedure if insufficient funds — special warrant district or special funding bond district. (1) After all warrants have been drawn and issued against the funds of an abandoned and abolished county under the provisions of 7-2-2724 and 7-2-2741, if it shall appear to the satisfaction of the board of county commissioners of the county designated in the petition for abandonment as the county to which the territory of the abandoned and abolished county is to be attached and made a part that the money in the several funds of such abandoned and abolished county, together with all money which may be received for such funds from the payment and collection of delinquent taxes, unpaid licenses, and other sources owing to such abandoned and abolished county, will be insufficient to pay all outstanding and unpaid warrants issued and drawn against such funds, then the board of such county shall make an order creating a special warrant district and shall include within such district all of the territory embraced within the boundaries of the abandoned and abolished county at the time it ceased to exist.

(2) If it shall appear to the satisfaction of the board that a tax levy sufficient to pay such warrants and interest, when spread over a term of 3 years, will be too great a hardship on and too burdensome to the taxpayers owning property within the boundaries of such abandoned and abolished county, said board, instead of creating such special warrant district, shall create and establish a special funding bond district and shall include within the boundaries thereof

all of the territory embraced within the boundaries of such abandoned and abolished district at the time it ceased to exist.

History: **En. Sec. 16, Ch. 105, L. 1937; R.C.M. 1947, 16-4016(part).**

7-2-2746. Details relating to special warrant district. (1) The board of county commissioners creating a special warrant district shall, thereafter and at the time of making and fixing tax levies for county purposes, make and fix a levy against all taxable property within such special warrant district for the payment of said warrants and the interest thereon. The proceeds of such levy, when collected, shall be deposited by the county treasurer in a separate fund which shall be used for the payment of said warrants and interest and for no other purpose.

(2) Said tax levy need not be made at such a rate as will pay all of said warrants, with interest, in 1 year, but if said board shall deem it for the best interests of the taxpayers owning property within such special warrant district, such levy may be spread over a term of not more than 3 years.

History: **En. Sec. 16, Ch. 105, L. 1937; R.C.M. 1947, 16-4016(part).**

7-2-2747. Details relating to special funding bond district. (1) The board of county commissioners and the county clerk of the county to which the territory of such abandoned and abolished county has been attached and made a part shall be, respectively, the board of trustees and the clerk of a special funding bond district created pursuant to 7-2-2745(2), and the county treasurer shall act as the treasurer thereof. The board of trustees shall adopt an appropriate seal for such district.

(2) (a) After such district has been created and established, the board of trustees shall direct the county treasurer to use and apply all money in the several funds of the abandoned and abolished county, except money in any bond sinking and interest funds, to the payment of warrants issued and outstanding against such funds, with the interest thereon. Said board of trustees shall thereupon issue and sell bonds of such special funding bond district in an amount sufficient to pay all warrants against such funds remaining outstanding and unpaid, with the interest thereon. The proceeds derived from the sale of such bonds shall be used for such purpose and no other.

(b) All taxes levied for the payment of the principal and interest of such bonds, all taxes levied by the abandoned and abolished county for all of its funds (except bond sinking and interest funds) delinquent at the time such county ceased to exist, and all money owing to such abandoned and abolished county from all other sources shall be, when collected, paid into a special sinking and interest fund and used for the purpose of paying the principal and interest of such bonds and for no other purpose.

History: **En. Sec. 16, Ch. 105, L. 1937; R.C.M. 1947; 16-4016(part).**

7-2-2748. Special funding bond district bonds. (1) Bonds issued under 7-2-2747 shall not be issued for a longer period than 10 years and shall be issued without submitting the question of doing so to any election. Such bonds shall be issued in the name of such district and shall be signed by the trustees. The clerk shall attest the same and affix the seal of the district thereof, and they shall be registered in the office of the county treasurer, who shall certify such registration on such bonds. Except as otherwise provided herein and insofar as the same are not in conflict herewith, all of the provisions of

7-7-107, 7-7-108, 7-7-123, 7-7-124, 7-7-2104, 7-7-2106, and parts 22 and 23 of chapter 7 shall apply to, govern, and control the issuance, sale, and payment of such bonds, with the interest thereon, and the levying of taxes for such purposes.

(2) There shall be inserted and made a part of each such bond statements setting forth the purpose for which the same is issued and that said bonds do not incur, create, or constitute any indebtedness or obligation whatever on the part of the county of (naming the county whose board of county commissioners, acting as such trustees, are issuing such bonds) but that the principal and interest thereof will be paid by special millage taxes levied against all of the taxable property situated within the boundaries of such special funding bond district.

History: En. Sec. 16, Ch. 105, L. 1937; R.C.M. 1947, 16-4016(part); amd. Sec. 6, Ch. 370, L. 1987.

7-2-2749. Payment of outstanding bonds of abandoned county. (1) If any abandoned and abolished county shall have any bonds outstanding and unpaid at the time it ceases to exist, the territory within the boundaries of such county as they existed when such county so ceased to exist shall constitute a special district for the payment thereof. The board of county commissioners of the county designated in the petition for abandonment as the county to which the territory of such county is to be attached and made a part shall annually levy a tax against all taxable property in such taxing district sufficient to pay the interest and principal of such bonds as the same become due, and all of the provisions of 7-7-107, 7-7-108, 7-7-123, 7-7-124, 7-7-2104, 7-7-2106, and parts 22 and 23 of chapter 7 shall apply to, govern, and control the levying and collection of such taxes and the payment of interest and principal thereof by the boards and officers of the county within which such district is situated.

(2) Any and all money in any bond sinking and interest funds of such abandoned and abolished county, when transmitted and paid over to the treasurer of the county to which the territory of such abandoned and abolished county has been attached, shall be credited to and deposited in a sinking and interest fund. All taxes levied for the payment of such bonds and interest and delinquent at the time such county ceased to exist, all taxes levied for such sinking and interest fund in accordance with the provisions of 7-2-2742 through 7-2-2750, and all other money coming to the hands of such county treasurer for the use or benefit of such abandoned county, when not required for any other purposes under the provisions of this part, shall be deposited to the credit of such sinking and interest fund and used for the payment of the principal and interest of such bonds and for no other purpose.

History: En. Sec. 16, Ch. 105, L. 1937; R.C.M. 1947, 16-4016(part); amd. Sec. 7, Ch. 370, L. 1987.

7-2-2750. Procedure to collect and transmit taxes when several counties involved. (1) Whenever any levy is made under the provisions of 7-2-2745 through 7-2-2749, the county clerk of the county in which the board of county commissioners makes such levy shall immediately certify such levy to the county clerk of each other county to which any part of the territory of the abandoned county has been attached.

(2) (a) The county clerk of each such other county shall compute and extend the taxes against the property within the portion of the abandoned county which has been attached to his county, and the treasurer of such county shall collect the same at the same time and in the same manner that other taxes are collected by said county treasurer.

(b) Each such treasurer shall, at least twice each year, once during the second week in December and once during the second week in June, transmit the amount of all such taxes paid to and collected by him and then in his hands as county treasurer to the treasurer of the county in which the board made such tax levy.

History: En. Sec. 16, Ch. 105, L. 1937; R.C.M. 1947, 16-4016(part).

7-2-2751. Disposition of money of abandoned district. If, after all warrants issued and drawn by an abandoned and abolished district during its existence against its several funds and all warrants drawn and issued against said funds under the provisions of 7-2-2724 and 7-2-2741 have been fully paid, with the interest thereon:

(1) any balance remains in such funds, such balance, with any and all money thereafter accruing to any of such funds from the collection of delinquent taxes, unpaid licenses, and from other sources shall be deposited:

(a) to the credit of any special sinking and interest fund for the payment of district funding bonds issued under the provisions of 7-2-2745(2), 7-2-2747, and 7-2-2748; and

(b) if there be no such fund, then to the credit of any bond sinking and interest fund under 7-2-2749 and 7-2-2750; and

(2) after all warrants issued and drawn against any of such funds with the interest thereon, and all district funding bonds issued under the provisions of 7-2-2745(2), 7-2-2747, and 7-2-2748 and all bonds referred to in 7-2-2749 have been fully paid, then any balance remaining in any of such funds and all money accruing to any or all of such funds thereafter from any and all sources shall be deposited to the credit of such funds of the county designated in the petition for abandonment as the county to which the territory of the abandoned and abolished county has been attached and made a part, as its board of county commissioners may direct.

History: En. Sec. 17, Ch. 105, L. 1937; R.C.M. 1947, 16-4017.

7-2-2752. Liability for and payment of indebtedness of abandoned county. It is intended by the provisions of this part that no part of the indebtedness of an abandoned and abolished county shall be assumed by, become an obligation of, or be paid by a county to which the territory of the abandoned and abolished county is attached and made a part, but that all money in all funds of an abandoned and abolished county at the time it ceases to exist and all money thereafter received by such funds from the payment of delinquent taxes and unpaid licenses and from all other sources owing to such county at the time it ceased to exist and all money received from the rental or sale of the property owned by such county shall be used for the payment of its indebtedness existing at the time it ceased to exist and the cost and expense of attaching its territory to and making it a part of any adjoining county. Such county to which any part of its territory is attached and made a part shall receive only such balance of any such money as may remain after all of the indebtedness and cost are fully paid.

History: **En. Sec. 21, Ch. 105, L. 1937; R.C.M. 1947, 16-4021.**

7-2-2753. Repealed. Sec. 169, Ch. 27, Sp. L. November 1993.

History: **En. Sec. 19, Ch. 105, L. 1937; amd. Sec. 2, Ch. 388, L. 1975; R.C.M. 1947, 16-4019; amd. Sec. 16, Ch. 250, L. 1979.**

7-2-2754. Ownership and management of property acquired by continuing county. Each county to which any part of an abandoned and abolished county is attached becomes the owner, under the provisions of this part, of the real and tangible personal property of the abandoned and abolished county and may use all of this property for county purposes, may lease any of this real estate, or may sell any of the real estate or personal property.

History: **En. Sec. 20, Ch. 105, L. 1937; amd. Sec. 40, Ch. 566, L. 1977; R.C.M. 1947, 16-4020(1).**

7-2-2755. Lease of acquired real property. No real property may be leased unless the board of county commissioners presents to the judge of the district court to which the county is attached a petition describing the real estate, with any improvements thereon, and setting forth the terms of the proposed lease. The petition shall be approved by the judge and filed in the office of the clerk of the county.

History: **En. Sec. 20, Ch. 105, L. 1937; amd. Sec. 40, Ch. 566, L. 1977; R.C.M. 1947, 16-4020(3).**

7-2-2756. Sale of acquired real property. (1) No real estate may be sold by the board of county commissioners unless the property has been appraised within 1 year immediately prior to the date of sale by three taxpayers who reside within the territory of the abandoned and abolished county and who were appointed by the judge of the district court to which the county is attached, on petition of the board of such county. Every sale of real estate shall be made at public sale, and notice shall be published as provided in 7-1-2121. No such real estate shall be sold for a price less than 90% of the appraised value thereof.

(2) The full purchase price of any real estate so sold shall not be required to be made in one payment; but the purchaser thereof may pay the same in four installments, the first of which shall be not less than 25% of the purchase price, to be paid at the time of purchase, with the remainder to be paid in three equal annual installments with interest thereon at not less than 5% per annum. Whenever the purchase price of any real estate is to be paid in installments, the board shall enter into a contract with the purchaser thereof, and such contract shall be recorded in the office of the county clerk. When payment in full has been made for real estate, the chairman of the board shall execute and deliver the proper bill of sale or deed to the purchaser or his successor in interest.

(3) All real estate sold, with any improvements thereon, shall be subject to assessment and taxation annually to the purchaser or his successor in interest at a value equal to the amount paid on the purchase price thereof until the purchase price is fully paid, when such real estate shall be assessed at its full cash value. Any and all improvements placed on any such real estate after its purchase shall be subject to assessment and taxation at the full cash value thereof.

History: **En. Sec. 20, Ch. 105, L. 1937; amd. Sec. 40, Ch. 566, L. 1977; R.C.M. 1947, 16-4020(part); amd. Sec. 4, Ch. 349, L. 1985.**

7-2-2757. Sale of acquired personal property. (1) No personal property having a value in excess of $100 may be sold unless it has been appraised within 1 year immediately prior to the date of sale by three taxpayers who reside within the territory of the abandoned and abolished county and who were appointed by the judge of the district court to which the county succeeding to the ownership of the property is attached, on petition of the board of county commissioners thereof. No sale of any personal property may be made except at public sale after notice or for a price less than 90% of the appraised value.

(2) Whenever the purchase price of any real estate is to be paid in installments, the board shall enter into a contract with the purchaser thereof, and such contract shall be recorded in the office of the county clerk. When payment in full has been made for any personal property, the chairman of the board shall execute and deliver the proper bill of sale or deed to the purchaser or his successor in interest.

History: **En. Sec. 20, Ch. 105, L. 1937; amd. Sec. 40, Ch. 566, L. 1977; R.C.M. 1947, 16-4020(part).**

7-2-2758. Compensation for appraisers. The compensation of all appraisers appointed under the provisions of 7-2-2756 and 7-2-2757 shall be fixed by the district judge appointing the same.

History: **En. Sec. 20, Ch. 105, L. 1937; amd. Sec. 40, Ch. 566, L. 1977; R.C.M. 1947, 16-4020(part).**

7-2-2759. Distribution of money derived from acquired property. (1) Money received from leases or sales of real or personal property by any county other than the county designated in the petition for abandonment as the county to which the territory of the abandoned county is to be allocated shall be transmitted by the officers of such county to the treasurer of the county designated in such petition for abandonment.

(2) All money received from the sale of personal property and from the leasing or sale of real estate, after deducting therefrom the amounts paid appraisers and for publishing notices of sale, shall be used and applied as follows:

(a) if there are any warrants issued and outstanding against any of the funds of the abandoned and abolished county, such money shall be applied in payment of such warrants and interest;

(b) if there are no warrants outstanding but district bonds have been issued under the provisions of 7-2-2745(2), 7-2-2747, and 7-2-2748, then the money shall be deposited in the sinking and interest fund for district bonds;

(c) if there are no district bonds outstanding, then the money shall be deposited to the credit of the sinking and interest funds for bonds issued and outstanding when the abandoned and abolished county ceased to exist; and

(d) if there are no bonds outstanding, then the money shall be apportioned to all of the counties to which parts of the abandoned county were attached in the proportion which the taxable value of the property in each part on January 1 immediately preceding the abandonment bears to the taxable value of all the property in the abandoned county, and the apportioned money shall be deposited in the funds of each county as the boards of county commissioners of the counties may direct.

History: **En. Sec. 20, Ch. 105, L. 1937; amd. Sec. 40, Ch. 566, L. 1977; R.C.M. 1947, 16-4020(part).**

Parts 28 through 40 reserved

Part 41

Organization and Incorporation of New Municipalities

7-2-4101. Petition to organize municipalities. (1) Whenever the inhabitants of any part of a county desire to be organized into a city or town, they may apply by petition in writing, signed by not less than two-thirds of the registered electors but not more than 300 such electors, who are residents of the state and residing within the limits of the proposed incorporation, to the board of county commissioners of the county in which the territory is situated.

(2) (a) The petition must describe the limits of the proposed city or town and of the several wards thereof, each of which shall contain 50 or more registered electors and must not exceed 1 square mile for each 500 inhabitants resident therein.

(b) The petitioners must annex to the petition a map of the proposed territory to be incorporated and state the name of the city or town.

(3) The petition and map must be filed in the office of the election administrator.

History: **En. Sec. 315, 5th Div. Comp. Stat. 1887; re-en. Sec. 4720, Pol. C. 1895; re-en. Sec. 3208, Rev. C. 1907; amd. Sec. 1, Ch. 56, L. 1909; re-en. Sec. 4961, R.C.M. 1921; re-en. Sec. 4961, R.C.M. 1935; amd. Sec. 1, Ch. 86, L. 1973; amd. Sec. 1, Ch. 515, L. 1973; R.C.M. 1947, 11-203(part); amd. Sec. 289, Ch. 571, L. 1979; amd. Sec. 1, Ch. 255, L. 1981.**

7-2-4102. Census of proposed municipality. Upon filing the petition, the board of county commissioners, at its next regular or special meeting, must appoint some suitable person to take a house-to-house census of the residents of the territory to be incorporated. After taking the census, the person appointed to take the same must return the list to the board, and the same must be filed by it in the county clerk's office.

History: **En. Sec. 315, 5th Div. Comp. Stat. 1887; re-en. Sec. 4720, Pol. C. 1895; re-en. Sec. 3208, Rev. C. 1907; amd. Sec. 1, Ch. 56, L. 1909; re-en. Sec. 4961, R.C.M. 1921; re-en. Sec. 4961, R.C.M. 1935; amd. Sec. 1, Ch. 86, L. 1973; amd. Sec. 1, Ch. 515, L. 1973; R.C.M. 1947, 11-203(part).**

7-2-4103. Prerequisites to organization of municipality. No municipal corporation may be formed unless:

(1) (a) the number of inhabitants is 300 or upwards; or

(b) the community was a townsite owned and built by the U.S. government prior to April 3, 1981; and

(2) the boundary of the proposed territory to be incorporated is more than 3 miles from the boundary, measured from the nearest point between the two, of any presently incorporated city or town or there is presented to the board appropriate evidence that any presently incorporated city or town within 3 miles which legally could annex has refused to annex the proposed territory.

History: **En. Sec. 315, 5th Div. Comp. Stat. 1887; re-en. Sec. 4720, Pol. C. 1895; re-en. Sec. 3208, Rev. C. 1907; amd. Sec. 1, Ch. 56, L. 1909; re-en. Sec. 4961, R.C.M. 1921; re-en.**

Sec. 4961, R.C.M. 1935; amd. Sec. 1, Ch. 86, L. 1973; amd. Sec. 1, Ch. 515, L. 1973; R.C.M. 1947, 11-203(part); amd. Sec. 2, Ch. 255, L. 1981.

7-2-4104. Election on question of organization. (1) After filing the petition and census, if there is the requisite number of inhabitants for the formation of a municipal corporation as required in 7-2-4103, the county commissioners shall call an election of all the registered electors residing in the territory described in the petition.

(2) The election must be held at a convenient place within the territory described in the petition, to be designated by the board. If possible, the election must be held in conjunction with a regular or primary election.

(3) The ballots used at the election must contain the words "For incorporation" or "Against incorporation", and all elections must be conducted as provided in Title 13.

History: En. Sec. 316, 5th Div. Comp. Stat. 1887; amd. Sec. 2, p. 178, L. 1889; re-en. Sec. 4721, Pol. C. 1895; re-en. Sec. 3209, Rev. C. 1907; re-en. Sec. 4962, R.C.M. 1921; re-en. Sec. 4962, R.C.M. 1935; R.C.M. 1947, 11-204(part); amd. Sec. 290, Ch. 571, L. 1979; amd. Sec. 4, Ch. 387, L. 1995.

Compiler's Comments

1995 Amendment: Chapter 387 in (2), at end, inserted "If possible, the election must be held in conjunction with a regular or primary election"; and made minor changes in style.

7-2-4105. Notice of election on question of organization. Notice of the election shall be published as provided in 13-1-108. The notice shall contain a description of the boundaries of the city or town.

History: En. Sec. 316, 5th Div. Comp. Stat. 1887; amd. Sec. 2, p. 178, L. 1889; re-en. Sec. 4721, Pol. C. 1895; re-en. Sec. 3209, Rev. C. 1907; re-en. Sec. 4962, R.C.M. 1921; re-en. Sec. 4962, R.C.M. 1935; R.C.M. 1947, 11-204(part); amd. Sec. 291, Ch. 571, L. 1979.

7-2-4106. First election for officers. (1) When the incorporation of a city or town is completed, the board of county commissioners shall give notice for 30 days in a newspaper published within the limits of the city or town or, if none is published within the limits, by posting notices in six public places within the limits of the city or town of the time and place or places of holding the first election for offices of the city or town. The election must be held in conjunction with a regular or primary election.

(2) At the election, all the electors qualified by the general election laws of the state who have resided within the limits of the city or town for 6 months and within the limits of the ward for 30 days preceding the election are qualified electors and may choose officers for the city or town, to hold office as prescribed in 7-2-4107.

(3) The board shall appoint election judges and canvass and declare the result of the election. The election must be conducted in the manner required by law for the election of county officers.

History: En. Sec. 318, 5th Div. Comp. Stat. 1887; amd. Sec. 2, p. 178, L. 1889; re-en. Secs. 4722, 4723, Pol. C. 1895; re-en. Secs. 3210, 3211, Rev. C. 1907; re-en. Secs. 4963, 4964, R.C.M. 1921; re-en. Secs. 4963, 4964, R.C.M. 1935; R.C.M. 1947, 11-205, 11-206(part); amd. Sec. 292, Ch. 571, L. 1979; amd. Sec. 5, Ch. 387, L. 1995.

Compiler's Comments

1995 Amendment: Chapter 387 in (1), in two places, substituted "city or town" for "corporation" and at end inserted "The election must be held in conjunction with a regular or primary election"; and made minor changes in style.

Cross-References

Electors — qualifications, 13-1-111 through 13-1-114.

Election judges, Title 13, ch. 4.

General election procedures, Title 13, ch. 12 through 17.

7-2-4107. Officers elected at first election. (1) At such election there must be elected:

(a) in a city of the first class, a mayor, a city judge, a city attorney, a city treasurer, a city marshal, and two aldermen from each ward into which the city may be divided;

(b) in a city of the second class, a mayor, a city judge, a city treasurer, a city marshal, and two aldermen from each ward;

(c) in a town, a mayor and two aldermen from each ward.

(2) Those elected hold office until the first Monday of January after the first annual election and until their successors are elected and qualified. The persons so elected must qualify in the manner prescribed by law for county officers.

History: En. Sec. 318, 5th Div. Comp. Stat. 1887; amd. Sec. 2, p. 178, L. 1889; re-en. Sec. 4723, Pol. C. 1895; re-en. Sec. 3211, Rev. C. 1907; re-en. Sec. 4964, R.C.M. 1921; re-en. Sec. 4964, R.C.M. 1935; R.C.M. 1947, 11-206(part); amd. Sec. 380, Ch. 571, L. 1979.

Cross-References

Qualification of county officers, Title 7, ch. 4, part 22; 7-4-2201.

Part 42

Addition to Municipalities

7-2-4201. Additions to municipalities. Whenever territory adjoining any incorporated city or town is surveyed and laid off into streets or blocks as an addition thereto, said territory may become a part of such city or town:

(1) upon filing the map or plat thereof in the office of the county clerk; and

(2) upon the approval of the mayor and a majority of the council endorsed thereon.

History: En. Sec. 4724, Pol. C. 1895; re-en. Sec. 3212, Rev. C. 1907; re-en. Sec. 4976, R.C.M. 1921; re-en. Sec. 4976, R.C.M. 1935; R.C.M. 1947, 11-401.

7-2-4202. Control of additions. The council has control of all such additions.

History: En. Sec. 4725, Pol. C. 1895; re-en. Sec. 3213, Rev. C. 1907; re-en. Sec. 4977, R.C.M. 1921; re-en. Sec. 4977, R.C.M. 1935; R.C.M. 1947, 11-402(part).

7-2-4203. Imposition of conditions for approval of addition. (1) The council has power by ordinance to compel the owners of these additions to lay out streets, avenues, and alleys, so as to have the same correspond in width and direction and be continuations of the streets, avenues, and alleys in the city or town or in the addition thereto contiguous to or near the proposed addition.

(2) The owner of any addition has no rights or privileges unless the terms and conditions of the ordinance are complied with and the plat thereof has been submitted to and approved by the mayor and council and such approval endorsed thereon.

History: En. Sec. 4725, Pol. C. 1895; re-en. Sec. 3213, Rev. C. 1907; re-en. Sec. 4977, R.C.M. 1921; re-en. Sec. 4977, R.C.M. 1935; R.C.M. 1947, 11-402(part).

7-2-4204. Applicability of part. (1) When the proceedings for annexation of territory to a municipality are instituted as provided in this part, the provisions of this part and no other apply, except where otherwise explicitly indicated.

(2) The governing body of the municipality to which territory is proposed to be annexed may in its discretion select one of the annexation procedures in parts 42 through 47 that is appropriate to the circumstances of the particular annexation. The municipal governing body must then follow the specific procedures prescribed in the appropriate part.

History: En. Sec. 3, Ch. 642, L. 1979; amd. Sec. 1, Ch. 130, L. 1981.

7-2-4205. Provision of services. In all cases of annexation under current Montana law, services must be provided according to a plan provided by the municipality as specified in 7-2-4732, except:

(1) as provided in 7-2-4736; and

(2) in first-class cities when otherwise mutually agreed upon by the municipality and the real property owners of the area to be annexed.

History: En. Sec. 2, Ch. 642, L. 1979; amd. Sec. 1, Ch. 447, L. 1981; amd. Sec. 1, Ch. 66, L. 1995.

Compiler's Comments

1995 Amendment: Chapter 66 in (2) substituted "real property owners" for "freeholders"; and made minor changes in style. Amendment effective February 16, 1995.

7-2-4206 through 7-2-4209 reserved.

7-2-4210. When land conclusively presumed to be annexed. A tract or parcel of land that has been shown on municipal maps or plats as being within municipal boundaries but is later found to have been improperly or unofficially annexed is conclusively presumed to be annexed and may be so recorded if municipal taxes have been paid on the tract or parcel without protest for a period of 7 years.

History: En. Sec. 1, Ch. 109, L. 1981.

Part 43
Annexation of Contiguous Land

Part Cross-References

Annexation of contiguous government land, Title 7, ch. 2, part 44.

7-2-4301. What constitutes contiguous lands. Tracts or parcels of land proposed to be annexed to a city or town under the provisions of this part shall be deemed contiguous to such city or town even though such tracts or parcels of land may be separated from such city or town by a street or other roadway, irrigation ditch, drainage ditch, stream, river, or a strip of unplatted land too narrow or too small to be platted.

History: En. Sec. 1, Ch. 95, L. 1945; amd. Sec. 1, Ch. 16, L. 1955; R.C.M. 1947, 11-404.

7-2-4302. Annexation of contiguous municipalities. (1) When a city or town desires to be annexed to a contiguous city or town, the council of each thereof must appoint three commissioners to arrange and report to the municipal authorities, respectively, the terms and conditions on which the annexation can be made.

(2) If the city or town council of the municipal corporation to be annexed approves of the terms thereof, it must by ordinance so declare and thereupon submit the question of annexation to the electors of the respective cities or

towns. If a majority of the electors vote in favor of annexation, the council must so declare and a certified copy of the proceedings for annexation and of the ordinances must be filed with the clerk of the county in which the cities or towns so annexed are situated.

(3) When the copy of the proceedings and the ordinances is filed, the annexation is complete and the city or town to which the annexation is made has power, in addition to other powers conferred by this title, to pass all necessary ordinances to carry into effect the terms of the annexation.

(4) Such annexations do not affect or impair any rights, obligations, or liabilities then existing for or against either of such cities or towns.

History: En. Sec. 322, 5th Div. Comp. Stat. 1887; re-en. Sec. 4727, Pol. C. 1895; re-en. Sec. 3215, Rev. C. 1907; re-en. Sec. 4979, R.C.M. 1921; re-en. Sec. 4979, R.C.M. 1935; R.C.M. 1947, 11-405.

7-2-4303. Restrictions on annexation power. Land used for industrial or manufacturing purposes shall not be included in such city under the provisions of 7-2-4311 through 7-2-4314 and 7-2-4321 through 7-2-4325 without the consent in writing of the owners of such land.

History: En. Sec. 1, Ch. 30, L. 1905; re-en. Sec. 3214, Rev. C. 1907; re-en. Sec. 4978, R.C.M. 1921; amd. Sec. 1, Ch. 52, L. 1925; re-en. Sec. 4978, R.C.M. 1935; amd. Sec. 1, Ch. 239, L. 1957; amd. Sec. 1, Ch. 238, L. 1959; amd. Sec. 1, Ch. 217, L. 1961; amd. Sec. 1, Ch. 281, L. 1967; amd. Sec. 1, Ch. 510, L. 1977; R.C.M. 1947, 11-403(part).

7-2-4304. Applicability of part. (1) When the proceedings for annexation of territory to a municipality are instituted as provided in this part, the provisions of this part and no other apply, except where otherwise explicitly indicated.

(2) The governing body of the municipality to which territory is proposed to be annexed may in its discretion select one of the annexation procedures in parts 42 through 47 that is appropriate to the circumstances of the particular annexation. The municipal governing body must then follow the specific procedures prescribed in the appropriate part.

History: En. Sec. 3, Ch. 642, L. 1979; amd. Sec. 2, Ch. 130, L. 1981.

7-2-4305. Provision of services. In all cases of annexation under current Montana law, services must be provided according to a plan provided by the municipality as specified in 7-2-4732, except:

(1) as provided in 7-2-4736; and

(2) in first-class cities when otherwise mutually agreed upon by the municipality and the real property owners of the area to be annexed.

History: En. Sec. 2, Ch. 642, L. 1979; amd. Sec. 2, Ch. 447, L. 1981; amd. Sec. 2, Ch. 66, L. 1995.

Compiler's Comments

1995 Amendment: Chapter 66 in (2) substituted "real property owners" for "freeholders"; and made minor changes in style. Amendment effective February 16, 1995.

7-2-4306 through 7-2-4310 reserved.

7-2-4311. Annexation of contiguous land by cities of the first class. Any tracts or parcels of land which have been or may hereafter be platted into lots or blocks, streets, and alleys or platted for parks and the map or plat thereof filed in the office of the county clerk and recorder of the county in which the same are situated or any unplatted land that has been surveyed and for which a certificate of survey has been filed, as provided in these codes, which platted or unplatted land shall be contiguous to any incorporated city of the first class, may be embraced within the corporate limits thereof and the boundaries of such city of the first class extended so as to include the same in the manner provided in 7-2-4312 through 7-2-4314.

History: En. Sec. 1, Ch. 30, L. 1905; re-en. Sec. 3214, Rev. C. 1907; re-en. Sec. 4978, R.C.M. 1921; amd. Sec. 1, Ch. 52, L. 1925; re-en. Sec. 4978, R.C.M. 1935; amd. Sec. 1, Ch. 239, L. 1957; amd. Sec. 1, Ch. 238, L. 1959; amd. Sec. 1, Ch. 217, L. 1961; amd. Sec. 1, Ch. 281, L. 1967; amd. Sec. 1, Ch. 510, L. 1977; R.C.M. 1947, 11-403(part).

7-2-4312. Resolution of intent by first-class city — notice. When, in the judgment of any city council of a city of the first class expressed by a resolution duly and regularly passed and adopted, it will be to the best interest of such city and the inhabitants of any contiguous platted tracts or parcels of land or unplatted land for which a certificate of survey has been filed that the boundaries of such city shall be extended so as to include the same within the corporate limits thereof, the city clerk of such city shall:

(1) immediately notify in writing, addressed to the address to which tax notices are sent, all owners and purchasers under contracts for deed of property in the territory to be embraced; and

(2) cause a notice to be published in the newspaper published nearest such platted tracts or parcels of land or unplatted land for which a certificate of survey has been filed, at least once a week for 2 successive weeks.

History: En. Sec. 1, Ch. 30, L. 1905; re-en. Sec. 3214, Rev. C. 1907; re-en. Sec. 4978, R.C.M. 1921; amd. Sec. 1, Ch. 52, L. 1925; re-en. Sec. 4978, R.C.M. 1935; amd. Sec. 1, Ch. 239, L. 1957; amd. Sec. 1, Ch. 238, L. 1959; amd. Sec. 1, Ch. 217, L. 1961; amd. Sec. 1, Ch. 281, L. 1967; amd. Sec. 1, Ch. 510, L. 1977; R.C.M. 1947, 11-403(part); amd. Sec. 2, Ch. 526, L. 1983.

7-2-4313. Contents of notice — protest period. The notice must state that:

(1) the resolution has been duly and regularly passed; and

(2) for a period of 20 days after the first publication of the notice, the city clerk shall accept written comments approving or disapproving the proposed extensions of the boundaries of the city of the first class from real property owners of the area proposed to be annexed.

History: En. Sec. 1, Ch. 30, L. 1905; re-en. Sec. 3214, Rev. C. 1907; re-en. Sec. 4978, R.C.M. 1921; amd. Sec. 1, Ch. 52, L. 1925; re-en. Sec. 4978, R.C.M. 1935; amd. Sec. 1, Ch. 239, L. 1957; amd. Sec. 1, Ch. 238, L. 1959; amd. Sec. 1, Ch. 217, L. 1961; amd. Sec. 1, Ch. 281, L. 1967; amd. Sec. 1, Ch. 510, L. 1977; R.C.M. 1947, 11-403(part); amd. Sec. 3, Ch. 66, L. 1995.

Compiler's Comments

1995 Amendment: Chapter 66 in (2) substituted "real property owners of the area" for "freeholders of the territory"; and made minor changes in style. Amendment effective February 16, 1995.

7-2-4314. Hearing on question of annexation — resolution of annexation. (1) The clerk shall, at the next regular meeting of the city council of a city of the first class after the expiration of the 20-day period, forward all written communication received by the clerk for the city council's consideration. Except as provided in subsection (2), if after considering any written communication the city council adopts a resolution approving the annexation, the boundaries of the city must be extended to include the platted tracts or parcels of land or unplatted land for which a certificate of survey has been filed. The resolution must state the date on which the annexation takes effect.

(2) The resolution may not be adopted by the city council if disapproved in writing by a majority of the real property owners of the area proposed to be annexed, and further resolutions relating to the annexation of the area or any portion of the area may not be considered or acted upon by the council on its own initiative, without petition, for a period of 1 year from the date of disapproval.

History: **En. Sec. 1, Ch. 30, L. 1905; re-en. Sec. 3214, Rev. C. 1907; re-en. Sec. 4978, R.C.M. 1921; amd. Sec. 1, Ch. 52, L. 1925; re-en. Sec. 4978, R.C.M. 1935; amd. Sec. 1, Ch. 239, L. 1957; amd. Sec. 1, Ch. 238, L. 1959; amd. Sec. 1, Ch. 217, L. 1961; amd. Sec. 1, Ch. 281, L. 1967; amd. Sec. 1, Ch. 510, L. 1977; R.C.M. 1947, 11-403(part); amd. Sec. 4, Ch. 66, L. 1995.**

Compiler's Comments

1995 Amendment: Chapter 66 in (2) substituted "real property owners of the area" for "resident freeholders of the territory"; and made minor changes in style. Amendment effective February 16, 1995.

7-2-4315 through 7-2-4320 reserved.

7-2-4321. Annexation of contiguous land by towns and municipalities of the second or third class. Any tracts or parcels of land which shall be contiguous to any incorporated towns or any incorporated cities of the second and third class, as classified in 7-1-4111, may be embraced within the corporate limits thereof and the boundaries of such towns or cities of the second and third class extended so as to include the same in the manner provided in 7-2-4322 through 7-2-4325.

History: **En. Sec. 1, Ch. 30, L. 1905; re-en. Sec. 3214, Rev. C. 1907; re-en. Sec. 4978, R.C.M. 1921; amd. Sec. 1, Ch. 52, L. 1925; re-en. Sec. 4978, R.C.M. 1935; amd. Sec. 1, Ch. 239, L. 1957; amd. Sec. 1, Ch. 238, L. 1959; amd. Sec. 1, Ch. 217, L. 1961; amd. Sec. 1, Ch. 281, L. 1967; amd. Sec. 1, Ch. 510, L. 1977; R.C.M. 1947, 11-403(part); amd. Sec. 1, Ch. 320, L. 1985.**

7-2-4322. Resolution of intent by second- or third-class municipality — notice. When, in the judgment of any such city or town council expressed by resolution duly and regularly passed and adopted, it will be to the best interest of such city or town and the inhabitants thereof and of the inhabitants of any contiguous tracts or parcels of land, as aforesaid, that the boundaries of such city or town shall be extended so as to include the same within the corporate limits thereof, the city or town clerk of such city or town shall:

(1) forthwith notify in writing all property holders within the boundaries of the territory proposed to be embraced; and

(2) cause a notice to be published in the newspaper published nearest such tracts or parcels of land, at least once a week for 2 successive weeks.

History: **En. Sec. 1, Ch. 30, L. 1905; re-en. Sec. 3214, Rev. C. 1907; re-en. Sec. 4978, R.C.M. 1921; amd. Sec. 1, Ch. 52, L. 1925; re-en. Sec. 4978, R.C.M. 1935; amd. Sec. 1, Ch. 239, L. 1957; amd. Sec. 1, Ch. 238, L. 1959; amd. Sec. 1, Ch. 217, L. 1961; amd. Sec. 1, Ch. 281, L. 1967; amd. Sec. 1, Ch. 510, L. 1977; R.C.M. 1947, 11-403(part).**

7-2-4323. Contents of notice — protest period. The notice must state that:

(1) the resolution has been duly and regularly passed; and

(2) for a period of 20 days after the first publication of the notice, the city or town clerk shall accept written comments approving or disapproving the proposed extensions of the boundaries of the city or town from real property owners of the area proposed to be annexed.

History: En. Sec. 1, Ch. 30, L. 1905; re-en. Sec. 3214, Rev. C. 1907; re-en. Sec. 4978, R.C.M. 1921; amd. Sec. 1, Ch. 52, L. 1925; re-en. Sec. 4978, R.C.M. 1935; amd. Sec. 1, Ch. 239, L. 1957; amd. Sec. 1, Ch. 238, L. 1959; amd. Sec. 1, Ch. 217, L. 1961; amd. Sec. 1, Ch. 281, L. 1967; amd. Sec. 1, Ch. 510, L. 1977; R.C.M. 1947, 11-403(part); amd. Sec. 5, Ch. 66, L. 1995.

Compiler's Comments

1995 Amendment: Chapter 66 in (2) substituted "real property owners of the area" for "resident freeholders of the territory"; and made minor changes in style. Amendment effective February 16, 1995.

7-2-4324. Hearing on question of annexation — resolution of annexation. (1) The clerk shall, at the next regular meeting of the city or town council after the expiration of the 20-day period, forward all written communication received by the clerk for the council's consideration. Except as provided in subsection (2), if after considering any written communication the council adopts a resolution approving the annexation, the boundaries of the city or town must be extended to include the tracts or parcels of land. The resolution must state the date on which the annexation takes effect.

(2) The resolution may not be adopted by the council if disapproved in writing by a majority of the real property owners of the area proposed to be annexed.

History: En. Sec. 1, Ch. 30, L. 1905; re-en. Sec. 3214, Rev. C. 1907; re-en. Sec. 4978, R.C.M. 1921; amd. Sec. 1, Ch. 52, L. 1925; re-en. Sec. 4978, R.C.M. 1935; amd. Sec. 1, Ch. 239, L. 1957; amd. Sec. 1, Ch. 238, L. 1959; amd. Sec. 1, Ch. 217, L. 1961; amd. Sec. 1, Ch. 281, L. 1967; amd. Sec. 1, Ch. 510, L. 1977; R.C.M. 1947, 11-403(part); amd. Sec. 6, Ch. 66, L. 1995.

Compiler's Comments

1995 Amendment: Chapter 66 in (2) substituted "real property owners of the area" for "freeholders of the territory"; and made minor changes in style. Amendment effective February 16, 1995.

7-2-4325. Consolidation of proceedings for two or more tracts. Whenever two or more adjacent tracts taken as a whole shall adjoin the city or town, they may be included in one resolution under 7-2-4321 through 7-2-4325, although one or more of said tracts taken alone may not be adjacent to the corporate limits as then existing.

History: En. Sec. 1, Ch. 30, L. 1905; re-en. Sec. 3214, Rev. C. 1907; re-en. Sec. 4978, R.C.M. 1921; amd. Sec. 1, Ch. 52, L. 1925; re-en. Sec. 4978, R.C.M. 1935; amd. Sec. 1, Ch. 239, L. 1957; amd. Sec. 1, Ch. 238, L. 1959; amd. Sec. 1, Ch. 217, L. 1961; amd. Sec. 1, Ch. 281, L. 1967; amd. Sec. 1, Ch. 510, L. 1977; R.C.M. 1947, 11-403(3); amd. Sec. 2, Ch. 320, L. 1985.

7-2-4326 through 7-2-4330 reserved.

7-2-4331. When land conclusively presumed to be annexed. A tract or parcel of land that has been shown on municipal maps or plats as being within municipal boundaries but is later found to have been improperly or unofficially annexed is conclusively presumed to be annexed and may be so recorded if municipal taxes have been paid on the tract or parcel without protest for a period of 7 years.

History: En. Sec. 1, Ch. 109, L. 1981.

Part 44

Annexation of Contiguous Government Land

7-2-4401. What constitutes contiguous land for purpose of part. The land proposed to be annexed to a municipality under the provisions of this part shall be deemed contiguous to such municipality even though such land may be separated from such municipality by a street or other roadway, a sidewalk, a public way of any kind, an irrigation ditch or drainage ditch, or some other strip too small for the erection of houses.

History: En. Sec. 2, Ch. 189, L. 1957; R.C.M. 1947, 11-512.

7-2-4402. Annexation of contiguous government land. Whenever any land contiguous to a municipality is owned by the United States or by the state of Montana or by any agency, instrumentality, or political subdivision of either or whenever any of the foregoing have a beneficial interest in any land contiguous to a municipality, such land may be incorporated and included in the municipality to which it is contiguous and may be annexed thereto and made a part thereof in the manner provided in this part.

History: En. Sec. 1, Ch. 189, L. 1957; R.C.M. 1947, 11-511(part).

7-2-4403. Request for annexation by government official. The administrative head of the owner of land referred to in 7-2-4402 or the administrative head of the holder of a beneficial interest in such land shall file with the clerk of the municipality a description of the land, a certification of ownership or of beneficial interest therein, and a statement that the owner of or the holder of the beneficial interest in the land desires to have it annexed.

History: En. Sec. 1, Ch. 189, L. 1957; R.C.M. 1947, 11-511(part).

7-2-4404. Resolution of intent to annex. Upon receiving the request provided for in 7-2-4403, the governing body of the municipality shall pass a resolution reciting its intention to annex the land and setting a time and place for a public hearing thereon.

History: En. Sec. 1, Ch. 189, L. 1957; R.C.M. 1947, 11-511(part).

7-2-4405. Notice of resolution — protest period. The clerk of the municipality shall forthwith cause to be published in the newspaper nearest such land, at least once a week for 2 successive weeks, a notice that such resolution has been duly and regularly passed and that for a period of 20 days after the first publication of such notice, such clerk will receive expressions of approval or disapproval, in writing, of the proposed alterations of the boundaries of the municipality. Said notice shall also state the time and place set for the public hearing on the proposed annexation.

History: En. Sec. 1, Ch. 189, L. 1957; R.C.M. 1947, 11-511(2).

7-2-4406. Hearing on question of annexation — resolution of annexation. (1) At the time and place set for the aforesaid public hearing, the governing body of the municipality shall hear all persons and all things relative to the proposed annexation.

(2) If the governing body shall find that it is to the best interests of the municipality and its inhabitants to annex the land, it shall adopt a resolution of annexation of the land. Said resolution shall become effective 30 days after its passage and approval, and thereafter the boundary of said municipality shall be as set forth in said resolution.

History: **En. Sec. 1, Ch. 189, L. 1957; R.C.M. 1947, 11-511(part).**

7-2-4407. Filing of resolution and other papers. Within 30 days after the passage and approval of said resolution, a copy thereof, duly certified by the clerk of the municipality, together with a map showing the corporate limits of said municipality as altered and changed, shall be filed in the office of the county clerk and recorder of the county in which said municipality is located.

History: **En. Sec. 1, Ch. 189, L. 1957; R.C.M. 1947, 11-511(part).**

7-2-4408. Applicability of part. (1) When the proceedings for annexation of territory to a municipality are instituted as provided in this part, the provisions of this part and no other apply, except where otherwise explicitly indicated.

(2) The governing body of the municipality to which territory is proposed to be annexed may in its discretion select one of the annexation procedures in parts 42 through 47 that is appropriate to the circumstances of the particular annexation. The municipal governing body must then follow the specific procedures prescribed in the appropriate part.

History: **En. Sec. 3, Ch. 642, L. 1979; amd. Sec. 3, Ch. 130, L. 1981.**

7-2-4409. Provision of services. In all cases of annexation under current Montana law, services must be provided as specified in Title 7, chapter 2, part 47, except when mutually agreed upon by the municipality and the real property owners of the area to be annexed.

History: **En. Sec. 2, Ch. 642, L. 1979; amd. Sec. 7, Ch. 66, L. 1995.**

Compiler's Comments

1995 Amendment: Chapter 66 near end substituted "real property owners" for "freeholders"; and made minor changes in style. Amendment effective February 16, 1995.

7-2-4410 through 7-2-4420 reserved.

7-2-4421. When land conclusively presumed to be annexed. A tract or parcel of land that has been shown on municipal maps or plats as being within municipal boundaries but is later found to have been improperly or unofficially annexed is conclusively presumed to be annexed and may be so recorded if municipal taxes have been paid on the tract or parcel without protest for a period of 7 years.

History: **En. Sec. 1, Ch. 109, L. 1981.**

Part 45

Annexation of Wholly Surrounded Land

7-2-4501. Annexation of wholly surrounded land. A city may include as part of the city any platted or unplatted tract or parcel of land that is wholly surrounded by the city upon passing a resolution of intent, giving notice, and passing a resolution of annexation. Except as provided in 7-2-4502, the provisions of 7-2-4312 through 7-2-4314 apply to these resolutions and the notice requirement.

History: **En. Sec. 1, Ch. 30, L. 1905; re-en. sec. 3214, Rev. C. 1907; re-en. Sec. 4978, R.C.M. 1921; amd. Sec. 1, Ch. 52, L. 1925; re-en. Sec. 4978, R.C.M. 1935; amd. Sec. 1, Ch. 239, L. 1957; amd. Sec. 1, Ch. 238, L. 1959; amd. Sec. 1, Ch. 217, L. 1961; amd. Sec. 1, Ch. 281, L. 1967; amd. Sec. 1, Ch. 510, L. 1977; R.C.M. 1947, 11-403(part); amd. Sec. 17, Ch. 250, L. 1979; amd. Sec. 1, Ch. 200, L. 1983.**

7-2-4502. Protest not available. The land is annexed, if so resolved, whether or not a majority of the real property owners of the area to be annexed object.

History: En. Sec. 1, Ch. 30, L. 1905; re-en. sec. 3214, Rev. C. 1907; re-en. Sec. 4978, R.C.M. 1921; amd. Sec. 1, Ch. 52, L. 1925; re-en. Sec. 4978, R.C.M. 1935; amd. Sec. 1, Ch. 239, L. 1957; amd. Sec. 1, Ch. 238, L. 1959; amd. Sec. 1, Ch. 217, L. 1961; amd. Sec. 1, Ch. 281, L. 1967; amd. Sec. 1, Ch. 510, L. 1977; R.C.M. 1947, 11-403(part); amd. Sec. 8, Ch. 66, L. 1995.

Compiler's Comments

1995 Amendment: Chapter 66 near middle substituted "real property owners" for "resident freeholders"; and made minor changes in style. Amendment effective February 16, 1995.

7-2-4503. Restrictions on annexation power. Land shall not be annexed under this part whenever the land is used:

(1) for agricultural, mining, smelting, refining, transportation, or any industrial or manufacturing purpose; or

(2) for the purpose of maintaining or operating a golf or country club, an athletic field or aircraft landing field, a cemetery, or a place for public or private outdoor entertainment or any purpose incident thereto.

History: En. Sec. 1, Ch. 30, L. 1905; re-en. sec. 3214, Rev. C. 1907; re-en. Sec. 4978, R.C.M. 1921; amd. Sec. 1, Ch. 52, L. 1925; re-en. Sec. 4978, R.C.M. 1935; amd. Sec. 1, Ch. 239, L. 1957; amd. Sec. 1, Ch. 238, L. 1959; amd. Sec. 1, Ch. 217, L. 1961; amd. Sec. 1, Ch. 281, L. 1967; amd. Sec. 1, Ch. 510, L. 1977; R.C.M. 1947, 11-403(part).

7-2-4504. What constitutes contiguous lands. Tracts or parcels of land proposed to be annexed to a city or town under the provisions of this part shall be deemed contiguous to such city or town even though such tracts or parcels of land may be separated from such city or town by a street or other roadway, irrigation ditch, drainage ditch, stream, river, or a strip of unplatted land too narrow or too small to be platted.

History: En. Sec. 1, Ch. 95, L. 1945; amd. Sec. 1, Ch. 16, L. 1955; R.C.M. 1947, 11-404.

7-2-4505. Applicability of part. (1) When the proceedings for annexation of territory to a municipality are instituted as provided in this part, the provisions of this part and no other apply, except where otherwise explicitly indicated.

(2) The governing body of the municipality to which territory is proposed to be annexed may in its discretion select one of the annexation procedures in parts 42 through 47 that is appropriate to the circumstances of the particular annexation. The municipal governing body must then follow the specific procedures prescribed in the appropriate part.

History: En. Sec. 3, Ch. 642, L. 1979; amd. Sec. 4, Ch. 130, L. 1981.

7-2-4506. Provision of services. In all cases of annexation under current Montana law, services must be provided according to a plan provided by the municipality as specified in 7-2-4732, except:

(1) as provided in 7-2-4736; and

(2) in first-class cities, when otherwise mutually agreed upon by the municipality and the real property owners of the area to be annexed.

History: En. Sec. 2, Ch. 642, L. 1979; amd. Sec. 3, Ch. 447, L. 1981; amd. Sec. 9, Ch. 66, L. 1995.

Compiler's Comments

1995 Amendment: Chapter 66 in (2) substituted "real property owners" for "freeholders"; and made minor changes in style. Amendment effective February 16, 1995.

7-2-4507 through 7-2-4510 reserved.

7-2-4511. When land conclusively presumed to be annexed. A tract or parcel of land that has been shown on municipal maps or plats as being within municipal boundaries but is later found to have been improperly or unofficially annexed is conclusively presumed to be annexed and may be so recorded if municipal taxes have been paid on the tract or parcel without protest for a period of 7 years.

History: **En. Sec. 1, Ch. 109, L. 1981.**

Part 46
Annexation by Petition

7-2-4601. Annexation by petition. (1) The boundaries of any incorporated city or town may be altered and new areas annexed as provided in this part.

(2) The council or other legislative body of a municipal corporation, upon receiving a written petition for annexation containing a description of the area to be annexed and signed by not less than 33 ⅓% of the registered electors of the area proposed to be annexed, shall without delay submit to the electors of the municipal corporation and to the registered electors residing in the area proposed by the petition to be annexed the question of whether the area should be made a part of the municipal corporation.

(3) (a) The governing body of a municipality need not submit the question of annexation to the qualified electors as provided in subsection (2) if it has received a written petition containing a description of the area requested to be annexed and signed by:

(i) more than 50% of the resident electors owning real property in the area to be annexed; or

(ii) the owner or owners of 50% of the real property in the area to be annexed.

(b) The governing body may approve or disapprove a petition submitted under the provisions of subsection (3)(a) upon its merits. When the governing body approves the petition, it shall pass a resolution providing for the annexation.

History: **En. Sec. 1, Ch. 168, L. 1945; R.C.M. 1947, 11-506(1); amd. Sec. 293, Ch. 571, L. 1979; (3)En. Sec. 1, Ch. 641, L. 1979; amd. Sec. 1, Ch. 279, L. 1985; amd. Sec. 10, Ch. 66, L. 1995.**

Compiler's Comments

1995 Amendment: Chapter 66 in (3)(a)(i) substituted "resident electors owning real property in the area" for "resident freeholder electors of the territory"; in (3)(a)(ii) substituted "50% of the real property in the area" for "each parcel of property in the territory"; and made minor changes in style. Amendment effective February 16, 1995.

Cross-References

Petition requirements generally, 7-1-4130.

7-2-4602. Election on question of annexation by petition. (1) The question of annexation may be submitted at the next general municipal election to be held in the municipal corporation or it may be submitted prior to the general election, either at a special election called for that purpose or at any other municipal election, except an election at which the submission of such question is prohibited by law.

(2) The election shall be conducted and the returns made in the same manner as other city or town elections. All election laws governing city and town elections shall govern, insofar as they are applicable.

(3) Whenever the question of annexation under this title is submitted at either a general city or town election or at a special election, separate ballots, shall be provided therefor.

History: En. Secs. 1, 2, Ch. 168, L. 1945; R.C.M. 1947, 11-506(part), 11-507(part); amd. Sec. 294, Ch. 571, L. 1979.

Cross-References

Elections generally, Title 13.

General elections, 13-1-104.

7-2-4603. Notice of election. (1) The council or legislative body shall publish notice of the election as provided in 13-1-108.

(2) Such notice shall distinctly state the proposition to be submitted, i.e., that it is proposed to annex to, incorporate in, and make a part of such municipal corporation the territory or territories sought to be annexed, specifically describing the boundaries thereof.

(3) The notice of election shall designate the date of the election.

History: En. Sec. 1, Ch. 168, L. 1945; R.C.M. 1947, 11-506(part); amd. Sec. 295, Ch. 571, L. 1979.

7-2-4604. Repealed. Sec. 407, Ch. 571, L. 1979.

History: En. Sec. 2, Ch. 168, L. 1945; R.C.M. 1947, 11-507(part).

7-2-4605. Repealed. Sec. 407, Ch. 571, L. 1979.

History: En. Sec. 2, Ch. 168, L. 1945; R.C.M. 1947, 11-507(part).

7-2-4606. Resolution of annexation. (1) (a) If it is found that a majority of votes were cast in favor of the annexation, the city or town council or other legislative body shall, at a regular or special meeting held within 30 days of the election, pass and adopt a resolution providing for the annexation.

(b) The resolution must state that a petition has been filed with the council or other legislative body with the signatures of 33 ⅓% of the resident electors owning real property in the area proposed to be annexed; a description of the boundaries of the area to be annexed; a copy of the resolution ordering a general or special election; a copy of the notice of the election; the time and result of the canvass of the votes received in favor of annexation and the number of votes cast against annexation; and that the boundaries of the city or town will be extended to include the area described in the petition for annexation. The resolution must be incorporated in the minutes of the council or legislative body.

(2) A resolution adopted pursuant to 7-2-4601(3) must include a statement that a petition has been filed with the governing body containing the signatures of more than 50% of the resident electors owning real property or the owners of 50% of the area to be annexed; a description of the boundaries of the area to be annexed; and a statement that the boundaries of the municipality are to be extended to include the area described in the petition for annexation. The resolution must be incorporated in the minutes of the governing body. Upon incorporation in the minutes, the resolution must be filed and becomes effective as provided in 7-2-4607.

History: (1)En. Sec. 2, Ch. 168, L. 1945; R.C.M. 1947, 11-507(3); (2)En. Sec. 1, Ch. 641, L. 1979; amd. Sec. 2, Ch. 279, L. 1985; amd. Sec. 11, Ch. 66, L. 1995.

Compiler's Comments

1995 Amendment: Chapter 66 in (1)(b), in first sentence, substituted "resident electors owning real property in the area" for "resident freeholder electors of the territory"; in (2), in first clause of first sentence, substituted "resident electors owning real property" for "resident freeholder electors" and substituted "50% of the area" for "all of the territory"; and made minor changes in style. Amendment effective February 16, 1995.

7-2-4607. Filing of resolution. (1) The clerk or other officer performing the duties of clerk of such council or legislative body shall promptly make and certify under the seal of said municipal corporation a copy of said record so entered upon said minutes, which document shall be filed with the clerk of the county in which the city or town to which said territory or territories are sought to be annexed is situated.

(2) From and after the date of the filing of said document in the office of the county clerk, the annexation of such territory or territories so proposed to be annexed shall be deemed and shall be complete. Thenceforth such annexed territory or territories shall be, to all intents and purposes, a part of said municipal corporation, and the said city or town to which the annexation is made has the power to pass all necessary ordinances pertaining thereto.

History: En. Sec. 2, Ch. 168, L. 1945; R.C.M. 1947, 11-507(4).

7-2-4608. Restrictions on annexation power. (1) No territory which, at the time such petition for such proposed annexation is presented to such council or legislative body, forms any part of any incorporated city or town shall be annexed under the provisions of this part.

(2) No parcel of land which, at the time such petition for such proposed annexation is presented to such council or legislative body, is used in whole or in part for agricultural, mining, smelting, refining, transportation, or any industrial or manufacturing purpose or any purpose incident thereto shall be annexed under the provisions of this part.

History: En. Secs. 3, 4, Ch. 168, L. 1945; R.C.M. 1947, 11-508, 11-509.

7-2-4609. Applicability of part. (1) This part does not repeal parts 43 and 45 having reference to extension of the corporate limits of cities of the first, second, and third classes to include contiguous land but provides an alternative method that the municipal governing body may in its discretion choose to use for the annexation of territory or territories to municipal corporations.

(2) When any proceedings for annexation of territory or territories to any municipal corporation are commenced under this part, the provisions of this part and no other apply to such proceedings.

(3) When the proceedings for annexation of territory to a municipality are instituted as provided in this part, the provisions of this part and no other apply, except where otherwise explicitly indicated.

History: En. Sec. 5, Ch. 168, L. 1945; R.C.M. 1947, 11-510; amd. Sec. 18, Ch. 250, L. 1979; amd. Sec. 2, Ch. 641, L. 1979; (3)En. Sec. 3, Ch. 642, L. 1979; amd. Sec. 5, Ch. 130, L. 1981.

7-2-4610. Provision of services. In all cases of annexation under current Montana law, services must be provided according to a plan provided by the municipality as specified in 7-2-4732, except:

(1) as provided in 7-2-4736; and

(2) in first-class cities, when otherwise mutually agreed upon by the municipality and the real property owners of the area to be annexed.

History: **En. Sec. 2, Ch. 642, L. 1979; amd. Sec. 4, Ch. 447, L. 1981; amd. Sec. 12, Ch. 66, L. 1995.**

Compiler's Comments

1995 Amendment: Chapter 66 in (2) substituted "real property owners" for "freeholders"; and made minor changes in style. Amendment effective February 16, 1995.

7-2-4611 through 7-2-4620 reserved.

7-2-4621. When land conclusively presumed to be annexed. A tract or parcel of land that has been shown on municipal maps or plats as being within municipal boundaries but is later found to have been improperly or unofficially annexed is conclusively presumed to be annexed and may be so recorded if municipal taxes have been paid on the tract or parcel without protest for a period of 7 years.

History: **En. Sec. 1, Ch. 109, L. 1981.**

Part 47

Annexation With the Provision of Services

7-2-4701. Short title. This part shall be entitled "The Planned Community Development Act of 1973".

History: **En. 11-514 by Sec. 1, Ch. 364, L. 1974; R.C.M. 1947, 11-514.**

7-2-4702. Findings. (1) It is declared as a matter of state policy that current annexation laws and planning methods incorporated in the Montana system are in many cases discriminatory and are in many of the Montana cities causing indiscriminate growth patterns and in many cases forcing citizens of municipalities to be annexed without provision for adequate city services extended and provided for them.

(2) Likewise, in many cities city government is annexing and adding to cities not to the benefit of those being annexed, but to the benefit of the city, merely to derive a greater tax base.

(3) Likewise, in many cities there are those lying on the perimeter of the city not within the corporate boundaries of a city that are deriving many benefits from the city without paying their just and equal share for these services.

History: **En. 11-515 by Sec. 2, Ch. 364, L. 1974; R.C.M. 1947, 11-515(part).**

7-2-4703. Purpose. It is the purpose of this part to develop a just and equitable system of adding to and increasing city boundaries for the state of Montana, which will develop the following firm policies:

(1) Sound urban development is essential to the continued economic development of this state, and any annexation prepared must be well planned in advance.

(2) Municipalities are created to provide the governmental services essential for sound urban development and for the protection of health, safety, and welfare in areas being intensively used for residential, commercial, industrial, institutional, and governmental purposes or in areas undergoing such development, and future annexations must consider these principles.

(3) Municipal boundaries should be extended in accordance with legislative standards applicable throughout the state to include such areas and to

provide the high quality of governmental services needed for the public health, safety, and welfare.

(4) Areas annexed to municipalities in accordance with such uniform legislative standards should receive the services provided by the annexing municipality as soon as possible following annexation.

History: **En. 11-515 by Sec. 2, Ch. 364, L. 1974; R.C.M. 1947, 11-515(part).**

7-2-4704. Definitions. The following terms when used in this part have the following meanings except when the context clearly indicates a different meaning:

(1) "Contiguous" means any area that, at the time annexation procedures are initiated, either abuts directly on the municipal boundary or is separated from the municipal boundary by a street or street right-of-way, a creek or river, the right-of-way of a railroad or other public service corporation, lands owned by the city or some other political subdivision, or lands owned by the state.

(2) "Municipality" means any incorporated city or town.

(3) "Real property owner" means a person who holds an estate of life or inheritance in real property or who is the purchaser of an estate of life or inheritance in real property under a contract for deed, some memorandum of which has been filed in the office of the county clerk.

History: **En. 11-516 by Sec. 3, Ch. 364, L. 1974; R.C.M. 1947, 11-516; amd. Sec. 13, Ch. 66, L. 1995.**

Compiler's Comments

1995 Amendment: Chapter 66 in definition of municipality, after "any", inserted "incorporated" and at end deleted "under Montana law"; deleted definition of resident freeholder that read: ""Resident freeholder" means a person who maintains his residence on real property in which he holds an estate of life or inheritance or of which he is the purchaser of such an estate under a contract for deed, some memorandum of which has been filed in the office of the county clerk and recorder"; inserted definition of real property owner; and made minor changes in style. Amendment effective February 16, 1995.

7-2-4705. Annexation by municipalities providing services. (1) The governing body of any municipality may extend the corporate limits of the municipality under the procedure set forth in this part upon the initiation of the procedure by the governing body itself.

(2) Whenever the owners of real property situated outside the corporate boundaries of any municipality, but contiguous to the municipality, desire to have real estate annexed to the municipality, they shall file with the governing body of the municipality a petition bearing the signatures of 51% of the real property owners of the area sought to be annexed and requesting a resolution stating that the municipality intends to consider annexation. Upon passage of the resolution, the governing body shall follow the procedure in 7-2-4707 through 7-2-4713 and 7-2-4731(2).

History: **En. 11-517 by Sec. 4, Ch. 364, L. 1974; R.C.M. 1947, 11-517(part); amd. Sec. 19, Ch. 250, L. 1979; amd. Sec. 14, Ch. 66, L. 1995.**

Compiler's Comments

1995 Amendment: Chapter 66 in (2), near beginning, substituted "owners of real property" for "resident freeholders" and near middle substituted "real property owners" for "resident freeholders"; and made minor changes in style. Amendment effective February 16, 1995.

7-2-4706. Appeal if municipal governing body fails to act on petition. If the municipal governing body fails to act within 60 days, the petitioners may appeal to the district court under the procedure set down in 7-2-4741 through 7-2-4746.

History: En. 11-517 by Sec. 4, Ch. 364, L. 1974; R.C.M. 1947, 11-517(part).

7-2-4707. Resolution of intention to annex. The governing body of any municipality desiring to annex territory under the provisions of this part shall first pass a resolution stating the intent of the municipality to consider annexation. Such resolution shall describe the boundaries of the area under consideration and fix a date for a public hearing on the question of annexation, the date for such public hearing to be not less than 30 days and not more than 60 days following passage of the resolution.

History: En. 11-520 by Sec. 7, Ch. 364, L. 1974; R.C.M. 1947, 11-520(1).

7-2-4708. Notice of hearing. (1) The notice of public hearing shall:

(a) fix the date, hour, and place of the public hearing;

(b) describe clearly the boundaries of the area under consideration;

(c) state that the report required in 7-2-4731 will be available in the office of the municipal official designated by the governing body at least 14 days prior to the date of the public hearing.

(2) Such notice will be given by publication in a newspaper having general circulation in the municipality once a week for at least 4 successive weeks prior to the date of the hearing. The date of the last publication shall not be more than 7 days preceding the date of the public hearing. If there is no such newspaper, the municipality shall post the notice in at least five public places within the municipality and at least five public places in the area to be annexed for 30 days prior to the date of public hearing.

History: En. 11-520 by Sec. 7, Ch. 364, L. 1974; R.C.M. 1947, 11-520(2).

7-2-4709. Hearing on question of annexation. (1) At the public hearing, a representative of the municipality as designated by the governing body shall first make an explanation of the report required in 7-2-4731.

(2) Following such explanation, all persons resident or owning property in the territory described in the notice of public hearing and all residents of the municipality shall be given an opportunity to be heard.

History: En. 11-520 by Sec. 7, Ch. 364, L. 1974; R.C.M. 1947, 11-520(4).

7-2-4710. Protest. (1) For a period of 45 days after the public hearing provided for in 7-2-4707 through 7-2-4709, the governing body of the municipality shall accept written comments approving or disapproving the proposed annexation from real property owners of the area proposed to be annexed.

(2) If a majority of the real property owners disapprove of the proposed annexation in writing, further proceedings under this part relating to the area or any part of the area proposed to be annexed may not be considered or acted upon by the governing body on its own initiative, without petition, for a period of 1 year from the date of disapproval.

History: En. 11-520 by Sec. 7, Ch. 364, L. 1974; R.C.M. 1947, 11-520(8); amd. Sec. 1, Ch. 586, L. 1985; amd. Sec. 15, Ch. 66, L. 1995.

Compiler's Comments

1995 Amendment: Chapter 66 in (1), near end, substituted "real property owners of the area" for "freeholders of the territory"; in (2), near beginning, substituted "real property owners" for "freeholders" and near middle, after "annexed", inserted "may not be considered or acted upon by the governing body on its own initiative, without petition"; and made minor changes in style. Amendment effective February 16, 1995.

Cross-References

Protest, 7-1-4132.

7-2-4711. Ordinance of annexation. The municipal governing body shall take into consideration facts presented at the public hearing and shall have authority to amend the report required by 7-2-4731 and to make changes in the plans for serving the area proposed to be annexed so long as such changes meet the requirements of 7-2-4731 through 7-2-4733. At any regular or special meeting held no sooner than 7 days and no later than 60 days following such public hearing, the governing body shall have authority to adopt an ordinance extending the corporate limits of the municipality to include all or such part of the area described in the notice of public hearing which meets the requirements of 7-2-4734 and 7-2-4735 and which the governing body has concluded should be annexed.

History: En. 11-520 by Sec. 7, Ch. 364, L. 1974; R.C.M. 1947, 11-520(part).

7-2-4712. Contents of ordinance of annexation. (1) The ordinance shall:

(a) contain specific findings showing that the area to be annexed meets the requirements of 7-2-4734 and 7-2-4735;

(b) contain a statement of the intent of the municipality to provide services to the area being annexed as set forth in the report required by 7-2-4731; and

(c) fix the effective date of annexation.

(2) The external boundaries of the area to be annexed shall be described by metes and bounds.

History: En. 11-520 by Sec. 7, Ch. 364, L. 1974; R.C.M. 1947, 11-520(part).

7-2-4713. Effective date of annexation. The effective date of annexation may be fixed for any date within 12 months from the date of passage of the ordinance.

History: En. 11-520 by Sec. 7, Ch. 364, L. 1974; R.C.M. 1947, 11-520(part).

7-2-4714. Filing of annexation order. (1) The clerk or other officer performing the duties of the clerk of the governing body of a municipality shall promptly make and certify under the seal of the municipal corporation a copy of the record so entered upon the minutes, which document shall be filed with the clerk of the county in which the municipality to which the territory or territories are sought to be annexed is situated.

(2) From and after the date of filing the document in the office of the county clerk or the effective date of the ordinance, whichever is later, the annexation of the territory or territories shall be complete. Thenceforth such annexed territory or territories shall be a part of the municipal corporation and the city or town to which the annexation is made has the power to pass all necessary ordinances pertaining thereto.

History: En. 11-521 by Sec. 8, Ch. 364, L. 1974; R.C.M. 1947, 11-521.

7-2-4715. Simultaneous proceedings for several areas. If a municipality is considering the annexation of two or more areas which are all adjacent to the municipal boundary but are not adjacent to one another, it may undertake simultaneous proceedings under authority of this part for the annexation of such areas.

History: En. 11-520 by Sec. 7, Ch. 364, L. 1974; R.C.M. 1947, 11-520(7).

7-2-4716. Effect of annexation. (1) From and after the effective date of the annexation ordinance, the territory and its citizens and property shall be subject to all debts, laws, ordinances, and regulations in force in such municipality and shall be entitled to the same privileges and benefits as other parts of such municipality.

(2) The newly annexed territory shall be subject to municipal taxes levied for the fiscal year following the effective date of annexation. Annexed property which is part of a sanitary district or other special service district which has installed water, sewer, or other utilities or improvements paid for by the residents of said district shall not be subject to that part of the municipal taxes levied for debt service for the first 5 years after the effective date of annexation.

History: En. 11-520 by Sec. 7, Ch. 364, L. 1974; R.C.M. 1947, 11-520(6).

7-2-4717. Certain expenditures authorized. (1) Municipalities initiating annexations under the provisions of this part are authorized to make expenditures for surveys required to describe the property under consideration or for any other purpose necessary to plan for the study or annexation of unincorporated territory adjacent to the municipality.

(2) In addition, following final passage of the annexation ordinance, the annexing municipality shall have authority to proceed with expenditures for construction of streets, utility lines, and other capital facilities in the annexed area.

History: En. 11-524 by Sec. 11, Ch. 364, L. 1974; R.C.M. 1947, 11-524.

7-2-4718. Construction. (1) The method of annexation authorized in this part is independent from other methods of annexation authorized by state law.

(2) The governing body of the municipality to which territory is proposed to be annexed may in its discretion select one of the annexation procedures in parts 42 through 47 that is appropriate to the circumstances of the particular annexation. The municipal governing body must then follow the specific procedures prescribed in the appropriate part.

History: En. 11-525 by Sec. 12, Ch. 364, L. 1974; R.C.M. 1947, 11-525(part); amd. Sec. 1, Ch. 642, L. 1979; amd. Sec. 6, Ch. 130, L. 1981.

7-2-4719 through 7-2-4730 reserved.

7-2-4731. Plans and report on extension of services required. (1) A municipality exercising authority under this part shall make plans for the extension of services to the area proposed to be annexed and shall, prior to the public hearing provided for in 7-2-4707 through 7-2-4709, prepare a report setting forth its plans to provide services to such area. This report shall include:

(a) a map or maps of the municipality and adjacent territory to show the following information:

(i) the present and proposed boundaries of the municipality;

(ii) the present streets, major trunk water mains, sewer interceptors and outfalls, and other utility lines and the proposed extension of such streets and utility lines as required in subsection (1)(c); and

(iii) the general land-use pattern in the areas to be annexed;

(b) a statement showing that the area to be annexed meets the requirements of 7-2-4734 and 7-2-4735;

(c) a statement setting forth the plans of the municipality for extending to the area to be annexed each major municipal service performed within the municipality at the time of annexation.

(2) At least 14 days before the date of the public hearing provided for in 7-2-4707 through 7-2-4709, the governing body shall approve the report and shall make it available to the public at the office of the municipal official designated by the governing body. In addition, the municipality may prepare a summary of the full report for public distribution.

History: (1)En. 11-518 by Sec. 5, Ch. 364, L. 1974; Sec. 11-518, R.C.M. 1947; (2)En. 11-520 by Sec. 7, Ch. 364, L. 1974; Sec. 11-520, R.C.M. 1947; R.C.M. 1947, 11-518(part), 11-520(3).

7-2-4732. Contents of plan for extension of services. (1) Specifically, the plans for the extension of services shall provide a long-range plan for extension of services and the acquisition of properties outside the corporate limits. This plan must show anticipated development a minimum of 5 years into the future, showing on a yearly basis how the municipality plans to extend services, develop and add sections to the city.

(2) The plans shall:

(a) provide for extending police protection, fire protection, garbage collection, and streets and street maintenance services to the area to be annexed on substantially the same basis and in the same manner as such services are provided within the rest of the municipality prior to annexation;

(b) provide for future extension of streets and of major trunk water mains, sewer outfall lines, and other utility services into the area to be annexed, so that when such streets and utility lines become necessary and are constructed, property owners in the area to be annexed will be able to secure such services, according to the policies in effect in such municipality for extending such services to individual lots or subdivisions;

(c) if extension of streets and water, sewer, or other utility lines into the area to be annexed is necessary, set forth a proposed timetable for construction of such streets and utility lines.

(3) A method must be set forth by which the municipality plans to finance extension of services into the area to be annexed. If the area is serviced currently by adequate water and sewage services, streets, curbs, and gutters and no capital improvements are needed to provide adequate services stipulated by this section and 7-2-4731, the municipality must provide the area to be annexed with a plan of how they plan to finance other services to be included within the district—mainly, police protection, fire protection, garbage collection, street, and street maintenance services, as well as continued utility service.

(4) In this annexation plan, it must be clearly stated that the entire municipality tends to share the tax burden for these services, and if so, the area may be annexed without a bond issue under the provisions of this part.

History: En. 11-518 by Sec. 5, Ch. 364, L. 1974; R.C.M. 1947, 11-518(part).

7-2-4733. Vote required on proposed capital improvements. Included within the plan must be methodology whereby the area to be annexed may vote upon any proposed capital improvements. Should a negative vote be cast by over 50% of the residents in the section or sections to be annexed in such election, the area may not be annexed.

History: En. 11-518 by Sec. 5, Ch. 364, L. 1974; R.C.M. 1947, 11-518(part); amd. Sec. 20, Ch. 250, L. 1979.

7-2-4734. Standards to be met before annexation can occur. A municipal governing body may extend the municipal corporate limits to include any area which meets the following standards:

(1) It must be contiguous to the municipality's boundaries at the time the annexation proceeding is begun.

(2) No part of the area may be included within the boundary of another incorporated municipality.

(3) It must be included within and the proposed annexation must conform to a comprehensive plan as prescribed in Title 76, chapter 1.

(4) No part of the area may be included within the boundary, as existing at the inception of such attempted annexation, of any fire district organized under any of the provisions of part 21, chapter 33, if the fire district was originally organized at least 10 years prior to the inception of such attempted annexation. However, a single-ownership piece of land may be transferred from a fire district to a municipality by annexation as provided in 7-33-2127.

History: En. 11-519 by Sec. 6, Ch. 364, L. 1974; amd. Sec. 1, Ch. 81, L. 1977; R.C.M. 1947, 11-519(1), (2).

7-2-4735. Guidelines for new boundaries of municipality. In fixing new municipal boundaries, a municipal governing body shall:

(1) wherever practical, use natural topographic features such as ridgelines, streams, and creeks as boundaries; and

(2) if a street is used as a boundary, include within the municipality land on both sides of the street, with such outside boundary not extending more than 200 feet beyond the right-of-way of the street.

History: En. 11-519 by Sec. 6, Ch. 364, L. 1974; amd. Sec. 1, Ch. 81, L. 1977; R.C.M. 1947, 11-519(3).

7-2-4736. Preservation of existing garbage or solid waste service in the event of annexation. (1) A municipality that annexes or incorporates additional area receiving garbage and solid waste disposal service by a motor carrier authorized by the public service commission to conduct such service may not provide competitive or similar garbage and solid waste disposal service to any person or business located in the area for 5 years following annexation except:

(a) upon a proper showing to the public service commission that the existing carrier is unable or refuses to provide adequate service to the annexed or incorporated area; or

(b) after the expiration of 5 years, if a majority of the residents of the annexed or incorporated area sign a petition requesting the municipality to provide the service.

(2) If a proper showing is made that the existing carrier is unable or refuses to provide adequate service to the annexed or incorporated area or, after the expiration of 5 years, if a majority of the residents sign a petition requesting service from the municipality, the municipality may provide garbage and solid waste disposal service to the entire annexed or incorporated area.

(3) For the purposes of determining whether an existing motor carrier provides adequate service, those services provided by the carrier prior to annexation are considered adequate services.

History: En. 11-526 by Sec. 1, Ch. 131, L. 1977; R.C.M. 1947, 11-526; amd. Sec. 1, Ch. 434, L. 1979; amd. Sec. 1, Ch. 381, L. 1987.

Cross-References

Public Service Commission — certification of garbage or solid waste services, Title 69, ch. 12, part 3.

7-2-4737 through 7-2-4740 reserved.

7-2-4741. Right to court review when area annexed. (1) Within 30 days following the passage of an annexation ordinance under authority of this part, either a majority of the real property owners of the area to be annexed or the owners of more than 75% in assessed valuation of the real estate in the area who believe that they will suffer material injury by reason of the failure of the municipal governing body to comply with the procedures set forth in this part or to meet the requirements set forth in 7-2-4734 and 7-2-4735, as applied to their property, may file a petition in the district court of the district in which the municipality is located seeking review of the action of the governing body.

(2) If two or more petitions for review are submitted to the court, the court may consolidate the petitions for review at a single hearing.

History: En. 11-522 by Sec. 9, Ch. 364, L. 1974; R.C.M. 1947, 11-522(1), (2); amd. Sec. 16, Ch. 66, L. 1995.

Compiler's Comments

1995 Amendment: Chapter 66 in (1), near beginning, substituted "real property owners of the area to be annexed" for "resident freeholders in the territory" and at end, after "governing", substituted "body" for "board and serve a copy of the petition on the municipality in the manner of service of civil process"; and made minor changes in style. Amendment effective February 16, 1995.

Cross-References

Service of civil process, Title 25, ch. 3, part 2.

7-2-4742. Court review and decision when area annexed. (1) The review authorized under 7-2-4741 shall be conducted by the court without a jury. The court may hear oral arguments and receive written briefs and may take evidence intended to show that either:

(a) the statutory procedure was not followed; or

(b) the provisions of 7-2-4731 through 7-2-4735 were not met.

(2) The court may affirm the action of the governing body without change, or it may:

(a) remand the ordinance to the municipal governing body for further proceedings if procedural irregularities are found to have materially prejudiced the substantive rights of any of the petitioners;

(b) remand the ordinance to the municipal governing body for amendment of the boundaries to conform to the provisions of 7-2-4734 and 7-2-4735, but the court cannot remand the ordinance to the municipal governing body with directions to add an area to the municipality which was not included in the notice of public hearing and not provided for in plans for service; or

(c) remand the report to the municipal governing body for amendment of the plans for providing services to the end that the provisions of 7-2-4731 through 7-2-4733 are satisfied.

(3) If any municipality fails to take action in accordance with the court's instructions upon remand within 3 months from receipt of such instructions, the court may in its discretion extend the time for compliance.

History: **En. 11-522 by Sec. 9, Ch. 364, L. 1974; R.C.M. 1947, 11-522(3).**

7-2-4743. Presumption that municipal actions lawful. All decisions and findings of the governing body of the municipality shall be presumed to be reasonable and lawful until and unless they are modified or set aside by the governing body or upon review.

History: **En. 11-522 by Sec. 9, Ch. 364, L. 1974; R.C.M. 1947, 11-522(5).**

Cross-References

Presumption that official action regularly performed, 26-1-602.

7-2-4744. Appeal from district court. Any party to the review proceedings, authorized under 7-2-4741 including the municipality, may appeal to the Montana supreme court from the final judgment of the district court under rules of procedure applicable in other civil cases. The appealing party may apply to the lower court for a stay in its final determination or a stay of the annexation ordinance, whichever shall be appropriate, pending the outcome of the appeal to the higher court. The lower court may, with the agreement of the municipality, permit annexation to be effective with respect to any part of the area concerning which no appeal is being made.

History: **En. 11-522 by Sec. 9, Ch. 364, L. 1974; R.C.M. 1947, 11-522(part).**

7-2-4745. Effect of appeal on effective date of annexation. If part or all of the area annexed under the terms of an annexation ordinance is the subject of an appeal to the lower or higher court on the effective date of the ordinance, then the ordinance shall be deemed amended to make the effective date with respect to such area the date of the final judgment of the lower or higher court, whichever is appropriate, or the date the municipal governing board completes action to make the ordinance conform to the court's instructions in the event of remand.

History: **En. 11-522 by Sec. 9, Ch. 364, L. 1974; R.C.M. 1947, 11-522(part).**

7-2-4746. Appeal provisions exclusive. No decisions of the governing body shall be subject to collateral attack, and decisions may be reviewed or modified only in the manner provided in 7-2-4741 through 7-2-4744.

History: **En. 11-522 by Sec. 9, Ch. 364, L. 1974; R.C.M. 1947, 11-522(6).**

7-2-4747 through 7-2-4750 reserved.

7-2-4751. Right to court review when area not annexed. (1) If within 60 days of receiving a valid petition the governing body fails to pass a resolution of intent to annex, the petitioners may file a petition in the district court of the district in which the municipality is located.

(2) The municipality must be designated as the defendant in the cause and is required to appear and answer as in other cases.

History: **En. 11-523 by Sec. 10, Ch. 364, L. 1974; R.C.M. 1947, 11-523(part); amd. Sec. 17, Ch. 66, L. 1995.**

Compiler's Comments

1995 Amendment: Chapter 66 substituted (1) concerning petition to District Court for former language that read: "After the resident freeholders have properly petitioned the governing body of the municipality and the body has failed to pass a resolution of intent to annex within 60 days, the petitioners may file a complaint and a duplicate copy of the petition in the district court of the proper jurisdiction stating the reason why the proposed annexation should take place"; and made minor changes in style. Amendment effective February 16, 1995.

7-2-4752. Court review and decision when area not annexed. (1) The court, without a jury, shall hear and determine the questions presented in the petition.

(2) The court shall order the proposed annexation to take place, notwithstanding the provisions of any other law of this state, if the evidence establishes that:

(a) essential municipal services and facilities are not available to the inhabitants of such territory;

(b) the municipality is physically and financially able to provide municipal services to the area sought to be annexed; and

(c) at least one-eighth of the aggregate external boundaries of the territory sought to be annexed is contiguous to the boundaries of the municipality.

(3) If, however, the evidence does not establish all three of the foregoing factors, the court shall deny the petition to annex and dismiss the proceeding.

History: En. 11-523 by Sec. 10, Ch. 364, L. 1974; R.C.M. 1947, 11-523(part).

7-2-4753 through 7-2-4760 reserved.

7-2-4761. When land conclusively presumed to be annexed. A tract or parcel of land that has been shown on municipal maps or plats as being within municipal boundaries but is later found to have been improperly or unofficially annexed is conclusively presumed to be annexed and may be so recorded if municipal taxes have been paid on the tract or parcel without protest for a period of 7 years.

History: En. Sec. 1, Ch. 109, L. 1981.

Part 48

Exclusion of Land

7-2-4801. Use of terms contiguous and adjacent. For the purposes of this part, the words "contiguous" and "adjacent" shall include property on the opposite side of a street or alley from the property sought to be withdrawn.

History: En. Sec. 2, Ch. 33, L. 1927; amd. Sec. 2, Ch. 130, L. 1935; re-en. Sec. 4979.2, R.C.M. 1935; R.C.M. 1947, 11-502(part).

7-2-4802. Exclusion of land from municipalities. The boundaries of any incorporated city or town of this state may be altered and a portion of the territory thereof excluded therefrom, and the councils of such cities and towns are hereby granted power to enact resolutions for that purpose after proceedings had as required in this part.

History: En. Sec. 1, Ch. 33, L. 1927; re-en. Sec. 4979.1, R.C.M. 1935; R.C.M. 1947, 11-501.

7-2-4803. Petition to exclude land. (1) A petition in writing, signed by a number of the qualified electors residing within the corporate limits of such city or town equal to a majority of the votes cast at the last city election held therein or by the owners of not less than three-fourths in value of the territory sought to be excluded, shall be filed with the clerk of such city or town.

(2) Such petition shall be presented to the council of such city or town at the next regular meeting after the filing thereof.

History: **En. Sec. 2, Ch. 33, L. 1927; amd. Sec. 2, Ch. 130, L. 1935; re-en. Sec. 4979.2, R.C.M. 1935; R.C.M. 1947, 11-502(part).**

Cross-References

Petitions, 7-1-4130.

7-2-4804. Contents of petition. (1) Such petition shall set out and describe the territory to be excluded from the corporate limits, which territory must be on the border of such city or town, and the alteration of the boundaries desired by the petitioners, together with the boundaries of the city or town as it will exist after such change is made. Said petition shall also describe the streets, avenues, alleys, and public places, if any, in the territory sought to be excluded and shall distinctly specify which of said streets, avenues, alleys, or public places are to be retained for the use of the public after the territory has been excluded from the corporate limits of such city or town.

(2) Such petition shall pray that the council of such city or town shall enact a resolution altering the boundaries of such city or town and excluding therefrom the territory therein described.

History: **En. Sec. 2, Ch. 33, L. 1927; amd. Sec. 2, Ch. 130, L. 1935; re-en. Sec. 4979.2, R.C.M. 1935; R.C.M. 1947, 11-502(part).**

7-2-4805. Resolution of intent to exclude land — notice. If said council by resolution, duly and regularly passed and adopted, shall find that said petition is signed by the requisite number of qualified electors of said city or town or by the owners of not less than three-fourths in value of the territory to be excluded, that the territory petitioned to be excluded is within the corporate limits and on the border thereof, and that the granting of said petition will be to the best interest of such city or town and the inhabitants thereof and will not materially mar the symmetry of such city or town, the city or town clerk of such city or town shall forthwith cause a notice to be published in the newspaper nearest such territory petitioned to be excluded, at least once a week for 2 successive weeks.

History: **En. Sec. 2, Ch. 33, L. 1927; amd. Sec. 2, Ch. 130, L. 1935; re-en. Sec. 4979.2, R.C.M. 1935; R.C.M. 1947, 11-502(part).**

7-2-4806. Contents of notice — protest period. The notice shall be to the effect that:

(1) such resolution has been duly and regularly passed; and

(2) for a period of 20 days after the first publication of such notice, such city or town clerk will receive from the owners of the territory proposed to be excluded expressions of approval or disapproval, in writing, of the proposed alterations of the boundaries of such city or town by the exclusion of the territory petitioned to be excluded.

History: **En. Sec. 2, Ch. 33, L. 1927; amd. Sec. 2, Ch. 130, L. 1935; re-en. Sec. 4979.2, R.C.M. 1935; R.C.M. 1947, 11-502(part).**

Cross-References

Protests, 7-1-4132.

7-2-4807. Hearing on question of exclusion — resolution of exclusion. (1) The clerk shall, at the next regular meeting of the city or town council after expiration of the 20 days, lay before the same all communications in writing so received by him for its consideration, and if after considering the same, such council shall duly and regularly pass and adopt a resolution to that effect, the boundaries of such city or town shall be altered so as to exclude the territory described in said petition. Said resolution shall also describe the streets, avenues, alleys, and public places in said excluded territory which are to be vacated and abandoned.

(2) Said resolution shall become effective 30 days after its passage and approval, and thereafter the boundary of said city or town shall be as set forth in said resolution.

(3) Such resolution shall not be finally adopted by such council after written disapproval by a majority of the owners in value of the territory proposed to be excluded or after written disapproval or protest by a majority of the owners in value of property within the corporate limits of said city or town immediately adjacent and contiguous to the territory sought to be excluded.

History: (1), (3)En. Sec. 2, Ch. 33, L. 1927; amd. Sec. 2, Ch. 130, L. 1935; re-en. Sec. 4979.2, R.C.M. 1935; Sec. 11-502, R.C.M. 1947; (2)En. Sec. 3, Ch. 33, L. 1927; re-en. Sec. 4979.3, R.C.M. 1935; Sec. 11-503, R.C.M. 1947; R.C.M. 1947, 11-502(part), 11-503(part).

7-2-4808. Resolution and revised municipal map to be filed. (1) Within 30 days after the passage and approval of said resolution, a copy thereof, duly certified by the clerk of said city or town, together with a map showing the corporate limits of said city or town as altered and changed, shall be filed in the office of the county clerk and recorder of the county in which said city or town is located.

(2) Upon the filing of the certified copy of the resolution, all such streets, avenues, alleys, and public places to be abandoned or vacated, unless expressly excepted in said resolution, shall be deemed to be vacated and abandoned and the title thereto shall revert to the owners of the adjacent property.

History: (1) En. Sec. 3, Ch. 33, L. 1927; re-en. Sec. 4979.3, R.C.M. 1935; Sec. 11-503, R.C.M. 1947; (2)En. Sec. 2, Ch. 33, L. 1927; amd. Sec. 2, Ch. 130, L. 1935; re-en. Sec. 4979.2, R.C.M. 1935; Sec. 11-502, R.C.M. 1947; R.C.M. 1947, 11-502(part), 11-503(part).

7-2-4809. Liability of excluded territory for existing indebtedness. Such alteration shall not relieve any territory excluded from the limits of a city or town from its liability on account of any outstanding bonded indebtedness of such city or town or any indebtedness of any improvement district of which the excluded territory is a part, existing at the time of the passage of such resolution.

History: En. Sec. 4, Ch. 33, L. 1927; re-en. Sec. 4979.4, R.C.M. 1935; R.C.M. 1947, 11-504.

7-2-4810. Jurisdiction of municipality to levy tax to pay existing indebtedness. For the purpose of levying any tax or assessment necessary for the collection of any of the indebtedness specified in 7-2-4809, the territory so excluded shall be and remain under the jurisdiction of such city or town.

History: En. Sec. 5, Ch. 33, L. 1927; re-en. Sec. 4979.5, R.C.M. 1935; R.C.M. 1947, 11-505.

Part 49
Disincorporation of Municipalities

7-2-4901. Automatic disincorporation. (1) If the governing body of any city or town incorporated under the laws of Montana ceases to exist or fails to function for a period of 2 years, the city or town shall be disincorporated in the manner set forth in this part.

(2) (a) In cases where a city or town has been disincorporated by virtue of the provisions of subsection (1), the county commissioners shall file in their office an order that the disincorporation be granted. This order takes effect within 60 days following the date of the order.

(b) A certified copy of the order shall be sent to the state officials named in 7-2-4906.

History: (1)En. Sec. 1, Ch. 99, L. 1973; Sec. 11-308, R.C.M. 1947; (2)En. Sec. 7, Ch. 99, L. 1973; Sec. 11-314, R.C.M. 1947; R.C.M. 1947, 11-308, 11-314.

7-2-4902. Disincorporation by election. (1) Any city or town may be disincorporated in the manner provided in this section.

(2) If the registered electors of a city or town equal in number to at least 15% of the number of electors registered at the last municipal general election petition the board of county commissioners of the county where the city or town is situated to disincorporate the city or town or if the city governing body by a two-thirds vote of all its members resolves to disincorporate, then the board shall order a special election to be held within the city or town on the question of disincorporating the city or town. The election must be held in conjunction with a regular or primary election.

History: En. Sec. 2, Ch. 99, L. 1973; R.C.M. 1947, 11-309(1), (2); amd. Sec. 296, Ch. 571, L. 1979; amd. Sec. 1, Ch. 504, L. 1981; amd. Sec. 3, Ch. 250, L. 1985; amd. Sec. 1, Ch. 319, L. 1993; amd. Sec. 6, Ch. 387, L. 1995.

Compiler's Comments

1995 Amendment: Chapter 387 in (2), near middle after "order", deleted "within 60 days, that" and at end substituted "The election must be held in conjunction with a regular or primary election" for "The day for holding the election may not be less than 75 days or more than 120 days after the board orders the election"; and made minor changes in style.

7-2-4903. Notice of election on question of disincorporation. Notice of the election provided for in 7-2-4902 shall be published as provided in 13-1-108.

History: En. Sec. 2, Ch. 99, L. 1973; R.C.M. 1947, 11-309(3); amd. Sec. 297, Ch. 571, L. 1979.

7-2-4904. Details of election on disincorporation. (1) The election shall be conducted in the same manner as a regular city or town election. The election returns shall be made and canvassed in the same manner as are general election returns.

(2) The form of the ballot shall be:

☐ FOR the disincorporation of .... (insert name of city or town)

☐ AGAINST the disincorporation of .... (insert name of city or town).

History: (1)En. Sec. 4, Ch. 99, L. 1973; Sec. 11-311, R.C.M. 1947; (2)En. Sec. 3, Ch. 99, L. 1973; Sec. 11-310, R.C.M. 1947; R.C.M. 1947, 11-310, 11-311; amd. Sec. 298, Ch. 571, L. 1979.

Cross-References

Elections — returns and canvassing, Title 13, ch. 12 through 16.

7-2-4905. Effect of insufficient vote to disincorporate. If it is found by the canvass of the votes that less than 60% of the votes cast were in favor of disincorporation, the county commissioners shall declare the petition for disincorporation denied, in which case no other election may be held on the question of disincorporating said city or town until after the expiration of 2 years from the date of the election.

History: En. Sec. 5, Ch. 99, L. 1973; R.C.M. 1947, 11-312.

7-2-4906. Effect of sufficient vote to disincorporate. (1) In case the canvass reveals that 60% or more of all the votes cast were in favor of disincorporation, the county commissioners shall, under their hands, make and file in their office and cause to be entered upon their proceedings an order that the petition for disincorporation be granted and declaring that the city or town is disincorporated. The order takes effect within 60 days following the date of the order.

(2) A certified copy of the order shall be sent to the secretary of state and the head of the department of commerce.

History: En. Sec. 6, Ch. 99, L. 1973; amd. Sec. 9, Ch. 213, L. 1975; R.C.M. 1947, 11-313; amd. Sec. 7, Ch. 274, L. 1981; amd. Sec. 1, Ch. 287, L. 1983.

7-2-4907 through 7-2-4910 reserved.

7-2-4911. Certification of financial condition. (1) Upon receiving a certified copy of the order of disincorporation, the director of the department of commerce shall certify a current statement of the financial condition of the disincorporating city or town to the board of county commissioners.

(2) The statement shall include but not be limited to:

(a) a determination of all assets of the city or town, including any current or delinquent utility accounts and/or taxes receivable; and

(b) a statement of all city or town indebtedness, including any revenue or general obligation bonds, special improvement district obligations outstanding, contracts payable, all other obligations of the city, and a schedule for the repayment of indebtedness.

History: En. Sec. 8, Ch. 99, L. 1973; amd. Sec. 10, Ch. 213, L. 1975; R.C.M. 1947, 11-315(part); amd. Sec. 7, Ch. 274, L. 1981; amd. Sec. 1, Ch. 287, L. 1983.

7-2-4912. Management of unencumbered cash. (1) Under the supervision of the director of the department of commerce or his agent, the city treasurer or town clerk shall draw a treasurer's check for the amount of unencumbered cash in the city or town treasury. The check shall be made payable to and delivered to the county treasurer of the county in which the disincorporating city or town is situated.

(2) The county treasurer shall immediately place said money in a special fund, to be drawn upon as provided in this part.

History: En. Sec. 8, Ch. 99, L. 1973; amd. Sec. 10, Ch. 213, L. 1975; R.C.M. 1947, 11-315(part); amd. Sec. 7, Ch. 274, L. 1981; amd. Sec. 1, Ch. 287, L. 1983.

7-2-4913. Release of public property to county commissioners. Except as provided in 7-2-4914, upon the disincorporation of a city or town, every public officer of the city shall immediately turn over all public property of every nature and description in his possession to the board of county commissioners of the county in which the city or town is situated.

History: **En. Sec. 9, Ch. 99, L. 1973; R.C.M. 1947, 11-316(part).**

7-2-4914. Disposition of city court records. Notwithstanding the provisions of 7-2-4913, all court records of the city court, if any, shall be transferred to the nearest justice of the peace. The justice of the peace has the authority to execute and complete all unfinished business. All reports and remittances of fines and forfeitures are made in the same manner as that prescribed for justices of the peace.

History: **En. Sec. 9, Ch. 99, L. 1973; R.C.M. 1947, 11-316(part).**

7-2-4915. Effect of disincorporation on prior legal rights. The disincorporation of a city or town does not invalidate or affect any right, penalty, or forfeiture accruing to the city or town or invalidate or affect any contract entered into or imposed upon the corporation, but all the contracted indebtedness and obligations remain unimpaired by reason of the disincorporation of the city or town.

History: **En. Sec. 10, Ch. 99, L. 1973; R.C.M. 1947, 11-317(part).**

7-2-4916. Payment of debts and collection of receivables of disincorporated municipality. (1) The board of county commissioners of the county succeeding the disincorporated city or town shall provide for:

(a) the payment and discharge in good faith of all the indebtedness and obligations according to the tenor of the contract or indenture agreement by which they were contracted or the indebtedness incurred; and

(b) the collection of any indebtedness due the city or town.

(2) All instruments for the repayment of indebtedness are drawn by order of the board on the fund provided in 7-2-4912.

History: **En. Sec. 10, Ch. 99, L. 1973; R.C.M. 1947, 11-317(part).**

7-2-4917. Procedure to collect receivables. (1) The board of county commissioners shall make provisions for the collection of the amounts due a corporation and for the closing up of its affairs, and any act or acts necessary for that purpose and not otherwise provided shall, upon order of the board, be performed by the officer or officers performing similar duties for the county as if it had been performed by the proper officer of the city or town before disincorporation.

(2) The county shall succeed to and possess all rights of the corporation to indebtedness and has power to sue for or otherwise collect any debts in the name of the county.

History: **En. Sec. 13, Ch. 99, L. 1973; R.C.M. 1947, 11-320.**

7-2-4918. Tax levy in the event of insolvency. (1) If, at any time after the disincorporation of a city or town, it is found that there is not sufficient money in the treasury to the credit of the special fund of 7-2-4912 with which to pay any indebtedness of the corporation, the board of county commissioners has the power and it is its duty to levy and collect from the territory formerly included within the city or town a tax or taxes sufficient in amount to pay the indebtedness of the corporation as the same shall become due.

(2) The tax or taxes, assessments, and collections shall be made in the same manner and at the same time that other taxes of the county are levied and

collected and are an additional tax upon the property included within said territory or portions thereof for the payment of said debts.

(3) All money paid into the county treasury under the provisions of this part shall be placed to the credit of the special fund.

History: **En. Sec. 11, Ch. 99, L. 1973; R.C.M. 1947, 11-318.**

7-2-4919. Management of surplus assets deposited to special fund. If, after payment of the debts of the corporation and the liquidation, where possible, of tangible assets, any surplus shall remain in the hands of the county treasurer to the credit of the special fund, money remaining shall be transferred to the county general fund. Nothing in this section is intended to conflict with the provisions of 7-2-4915 and 7-2-4916.

History: **En. Sec. 12, Ch. 99, L. 1973; R.C.M. 1947, 11-319.**

7-2-4920. Payment of costs and expenses from special county fund. All costs and expenses of ascertaining information and all other costs and expenses incurred by the board of county commissioners in the execution of the powers and duties of managing the affairs of the disincorporated city or town provided for in this part shall be paid out of the special fund in the county treasury.

History: **En. Sec. 14, Ch. 99, L. 1973; R.C.M. 1947, 11-321.**

CHAPTER 3

ALTERNATIVE FORMS OF LOCAL GOVERNMENT

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Part 1
General Provisions

7-3-101. Compliance with constitution. (1) The purpose of parts 1 through 7 is to comply with Article XI, section 3(1), of the Montana constitution, which provides: "The legislature shall provide such optional or alternative forms of government that each unit or combination of units may adopt, amend, or abandon an optional or alternative form by a majority of those voting on the question."

(2) Parts 1 through 7 establish the alternative forms of government for cities, towns, counties, and consolidated governments. These parts shall be liberally construed to facilitate the adoption of a form of local government.

History: En. 47A-3-201 by Sec. 1, Ch. 344, L. 1975; R.C.M. 1947, 47A-3-201; amd. Sec. 1, Ch. 262, L. 1979.

Cross-References

Liberal construction, Art. XI, sec. 4(2), Mont. Const.

7-3-102. Adoption of alternative form. Each local government in the state shall adopt one of the alternative forms of government provided for in parts 1 through 7, including one of each suboption authorized:

(1) the commission-executive form (which may also be called the council-executive, the council-mayor, or the commission-mayor form);

(2) the commission-manager form (which may also be called the council-manager form);

(3) the commission form;

(4) the commission-chairman form;

(5) the town meeting form; or

(6) the charter form.

History: En. 47A-3-202 by Sec. 1, Ch. 344, L. 1975; R.C.M. 1947, 47A-3-202.

7-3-103. Amendment of self-government charter or adopted alternative form of government. (1) An amendment to a self-government charter or an adopted alternative form of government may only be made by submitting the question of amendment to the electors of the local government. To be effective, a proposed amendment must receive an affirmative vote of a majority of the electors voting on the question. An amendment approved by the electors becomes effective on the first day of the local government fiscal year following the fiscal year of approval unless the question submitted to the electors provides otherwise.

(2) An amendment to a self-government charter or an adopted alternative form of government may be proposed by initiative by petition of 15% of the electors registered at the last general election of the local government or by ordinance enacted by the governing body. The question on amendment of a charter or an adopted alternative form of government must be submitted to the electors at the next regular or primary election.

(3) The local government, by ordinance, may provide procedures for the submission and verification of initiative petitions.

History: En. 47A-3-209 by Sec. 4, Ch. 477, L. 1977; R.C.M. 1947, 47A-3-209; amd. Sec. 2, Ch. 319, L. 1993; amd. Sec. 7, Ch. 387, L. 1995.

Compiler's Comments

1995 Amendment: Chapter 387 in (2), at end, substituted "submitted to the electors at the next regular or primary election" for "submitted to the electors as soon as possible after the submission of a petition or enactment of a resolution, either at a regularly scheduled election or at a special election"; and made minor changes in style.

Cross-References

Effective date of alternative plan or amendment, 7-3-156.

Petition requirements, 7-5-132 through 7-5-136.

Elections on ballot issues, 7-5-136.

Local government fiscal years, 7-6-2201, 7-6-4101.

7-3-104. Limitation on change in alternative form. The electors of any unit of local government which has adopted a new alternative form of local government may not vote on the question of changing the form of local government until 3 years after the new alternative form of local government becomes effective, but the voters may vote on amendments to the alternative form or service or functional transfers.

History: **En. 16-5115.11 by Sec. 14, Ch. 513, L. 1975; R.C.M. 1947, 16-5115.11(part).**

Cross-References

Three-year moratorium on change, 7-3-155.

7-3-105. Plan of government. The approved plan filed with the secretary of state pursuant to subsection (3)(a) of section 14, Chapter 513, Laws of 1975, shall be the official plan and shall be a public record open to inspection of the public and judicially noticeable by all courts.

History: **En. 16-5115.11 by Sec. 14, Ch. 513, L. 1975; R.C.M. 1947, 16-5115.11(3)(b).**

Cross-References

Right to examine documents, Art. II, sec. 9, Mont. Const.

7-3-106. Effect of change in government. (1) All ordinances in effect at the time the new form of government becomes effective shall continue in effect until repealed or amended in the manner provided by law.

(2) The adoption of a new form of government shall not affect the validity of any bond, debt, contract, obligation, or cause of action accrued or established under the prior form of government.

History: **En. 16-5115.11 by Sec. 14, Ch. 513, L. 1975; R.C.M. 1947, 16-5115.11(part).**

Cross-References

Effect of adoption of new form of government, 7-3-152.

General transition provisions, 7-3-157.

7-3-107 through 7-3-110 reserved.

7-3-111. Statutory basis for elected county official government. (1) For the purpose of determining the statutory basis of existing units of local government after May 2, 1977, each unit of local government organized under the general statutes authorizing the elected county official form of government shall be governed by the following sections:

(a) 7-3-401;
(b) 7-3-402;
(c) 7-3-412(3);
(d) 7-3-413(1);
(e) 7-3-414(1);
(f) 7-3-415(2);
(g) 7-3-416(2);
(h) 7-3-417(2);
(i) 7-3-418;
(j) 7-3-432(1);
(k) 7-3-433(1);
(l) 7-3-434(1);
(m) 7-3-435(1);
(n) 7-3-436(1);
(o) 7-3-437(1);
(p) 7-3-438(1);

(q) 7-3-439(1);
(r) 7-3-440(1);
(s) 7-3-441(1);
(t) 7-3-442(1) if the county has elected an auditor;
(u) 7-3-442(6) if the county has not elected an auditor.

(2) This form has terms of 4 years for all elected officials except commissioners who are elected to 6-year terms. The commission consists of three members.

History: **En. 16-5115.1 by Sec. 4, Ch. 513, L. 1975; R.C.M. 1947, 16-5115.1(3).**

7-3-112. Statutory basis for county manager government. (1) For the purpose of determining the statutory basis of existing units of local government after May 2, 1977, each unit of local government organized under the general statutes authorizing the county manager form of government shall be governed by the following sections:

(a) 7-3-301;
(b) 7-3-303;
(c) 7-3-304;
(d) 7-3-305;
(e) 7-3-312(2);
(f) 7-3-313(1) or (2);
(g) 7-3-314(2);
(h) 7-3-315(1);
(i) 7-3-316(2);
(j) 7-3-317(2);
(k) 7-3-318.

(2) Commissioners are elected to 6-year terms. The size of the commission shall be established by ordinance, but it may not exceed five members.

History: **En. 16-5115.1 by Sec. 4, Ch. 513, L. 1975; R.C.M. 1947, 16-5115.1(4).**

7-3-113. Statutory basis for municipal council-mayor government. (1) For the purpose of determining the statutory basis of existing units of local government, each unit of local government organized under the general statutes authorizing the municipal council-mayor form of government, which does not adopt a new form, shall be governed after May 2, 1977 by the following sections:

(a) 7-3-201;
(b) 7-3-202(1);
(c) 7-3-203;
(d) 7-3-212(2);
(e) 7-3-213(3);
(f) 7-3-214(2);
(g) 7-3-215(2);
(h) 7-3-216(2);
(i) 7-3-217(1);
(j) 7-3-218(2);
(k) 7-3-219(1);
(l) 7-3-220(1);
(m) 7-3-221(3);
(n) 7-3-222(2);

(o) 7-3-223(2).

(2) This form has terms of 4 years for all elected officials. The size of the commission shall be established by ordinance, but it may not exceed 20 members.

History: **En. 16-5115.1 by Sec. 4, Ch. 513, L. 1975; R.C.M. 1947, 16-5115.1(1).**

7-3-114. Statutory basis for municipal commission-manager government. (1) For the purpose of determining the statutory basis of existing units of local government after May 2, 1977, each unit of local government organized under the general statutes authorizing the municipal commission-manager form of government shall be governed by the following sections:

(a) 7-3-301;
(b) 7-3-302(1);
(c) 7-3-303;
(d) 7-3-304;
(e) 7-3-305;
(f) 7-3-312(3);
(g) 7-3-313(1);
(h) 7-3-314(2);
(i) 7-3-315(2);
(j) 7-3-316(2);
(k) 7-3-317(2);
(l) 7-3-318.

(2) This form has terms of 4 years for all elected officials. The size of the commission shall be established by ordinance, but it may not exceed five members.

History: **En. 16-5115.1 by Sec. 4, Ch. 513, L. 1975; R.C.M. 1947, 16-5115.1(2).**

7-3-115 through 7-3-120 reserved.

7-3-121. Purpose. The purpose of 7-3-121 through 7-3-161 is to provide procedures for alteration of existing forms of local government.

History: **En. Sec. 1, Ch. 675, L. 1979.**

7-3-122. Definitions. As used in 7-3-121 through 7-3-161, unless the context indicates otherwise, the following definitions apply:

(1) "Authority" means:

(a) a municipal or regional airport authority as provided in Title 67, chapter 11;

(b) a conservancy district as provided in Title 85, chapter 9;

(c) a conservation district as provided in Title 76, chapter 15;

(d) a drainage district as provided in Title 85, chapter 8;

(e) an irrigation district as provided in Title 85, chapter 7;

(f) a hospital district as provided in Title 7, chapter 34, part 21;

(g) a flood control and water conservation district as provided in Title 76, chapter 5, part 11;

(h) a county water and sewer district as provided in Title 7, chapter 13, part 22; or

(i) an urban transportation district as provided in Title 7, chapter 14, part 2.

(2) "Finance administrator" means the individual responsible for the financial administration of the local government and generally means the

county or city treasurer or town clerk unless the alternative form or governing body specifies a different individual.

(3) "Governing body" means the commission or the town meeting legislative body established in the alternative form of a local government under Title 7, chapter 3, parts 1 through 7.

(4) "Local improvement district" means an improvement district in which property is assessed to pay for specific capital improvements benefiting the assessed property.

(5) "Records administrator" means the individual responsible for keeping the public records of the local government and generally means the county, city, or town clerk unless the alternative form or governing body specifies a different individual.

(6) "Subordinate service district" means a special district within a local government in which certain services are provided and in which taxes may be levied to finance the services.

History: **En. Sec. 2, Ch. 675, L. 1979; amd. Sec. 20, Ch. 575, L. 1981.**

Cross-References

County Clerk, Title 7, ch. 4, part 26.

County Treasurer, 7-4-3002.

City Clerk, 7-4-4501 through 7-4-4503.

Town Clerk, 7-4-4511 through 7-4-4513.

City Treasurer, 7-4-4701.

Improvement and service districts, Title 7, ch. 12.

7-3-123. Alteration of existing forms of local government. An alteration of an existing form of local government may be proposed by a petition of the electors.

History: **En. Sec. 3, Ch. 675, L. 1979.**

Cross-References

Local initiatives — generally, Title 7, ch. 5, part 1.

7-3-124. Election procedure. Except as otherwise provided in 7-3-121 through 7-3-161, each election under 7-3-121 through 7-3-161 is conducted in the same manner as an election involving ballot issues or of local officials.

History: **En. Sec. 4, Ch. 675, L. 1979.**

Cross-References

Ballot issues — local, 7-5-136.

Elections — generally, Title 13.

7-3-125. Petition for alteration. (1) A petition for the alteration of an existing form of local government may be presented to the governing body of the local government. The petition must meet the requirements of 7-3-142 through 7-3-145.

(2) The petition must be signed by at least 15% of the electors of the local government registered at the last general election, and upon receipt of the petition the governing body shall call an election, as provided for in 7-3-149 through 7-3-151, on the proposed alteration. Whenever county-municipal consolidation is proposed, the petition must be signed by at least 15% of the electors residing within the municipality or municipalities proposed to be consolidated and 15% of the electors residing in the remainder of the county.

History: **En. Sec. 5, Ch. 675, L. 1979.**

7-3-126 through 7-3-140 reserved.

7-3-141. Permissible recommendations. (1) A petition proposing to alter an existing form of county government may:

(a) recommend amendments to the existing plan of government;

(b) recommend any plan of government authorized by Title 7, chapter 3, parts 1 through 6;

(c) draft a charter;

(d) recommend municipal-county consolidation or amendments to an existing consolidation; or

(e) in cooperation with a similar petition calling for an election on county merger circulated in an adjoining county, recommend county merger.

(2) A petition proposing to alter an existing form of municipal government may:

(a) recommend amendments to the existing plan of government;

(b) recommend any plan of government authorized by Title 7, chapter 3, parts 1 through 6;

(c) draft a charter; or

(d) recommend disincorporation.

History: En. Sec. 6, Ch. 675, L. 1979; amd. Sec. 21, Ch. 575, L. 1981.

7-3-142. Requirements for petition. A petition proposing an alteration of an existing form of local government must contain:

(1) a certificate containing the "plan of government" of the existing form of local government;

(2) a certificate containing the "plan of government" of the proposed new form of local government or amendments to the existing plan;

(3) a certificate containing the "plan of apportionment" of commissioner districts if districts are contained in the "plan of government"; and

(4) a comparison of the existing plan and proposed plan of local government, including, if desired, a statement of the strengths and weaknesses of the existing and proposed plans of local government, information that supports the adoption of the proposed plan, and information that supports retention of the present plan.

History: En. Sec. 7, Ch. 675, L. 1979.

Cross-References

Existing form of government — statutory basis, 7-3-111 through 7-3-114.

7-3-143. Special requirements if consolidation recommended. (1) Whenever county-municipal consolidation is recommended, a petition, in addition to the material required in 7-3-142, must contain a consolidation plan which:

(a) provides for adjustment of existing bonded indebtedness and other obligations in a manner which assures a fair and equitable burden of taxation for debt service;

(b) provides for establishment of subordinate service districts;

(c) provides for the transfer or other disposition of property and other rights, claims, assets, and franchises of the local governments consolidated under its proposal;

(d) provides the official name of the consolidated local government; and

(e) (i) provides for the transfer, reorganization, abolition, adjustment of boundaries, or absorption of all existing boards, bureaus, special districts, subordinate service districts, local improvement districts, agencies, and political subdivisions of the consolidated governments, excluding school districts and nonconsolidated municipalities; or

(ii) grants the legislative body of the consolidated government the authority to transfer, reorganize, abolish, adjust boundaries (and may provide a method for adjusting boundaries), or absorb existing boards, bureaus, special districts, subordinate service districts, local improvement districts, agencies, and political subdivisions of the consolidated governments, excluding school districts and nonconsolidated municipalities, with or without referendum requirements.

(2) The consolidation plan may include other provisions that are consistent with state law.

(3) Whenever amendments to an existing consolidation plan are recommended, a petition must contain a certificate containing amendments to the consolidation plan.

History: En. Sec. 8, Ch. 675, L. 1979; amd. Sec. 26, Ch. 697, L. 1983.

Cross-References

Operation of self-government consolidated units of local government, 7-5-201.

7-3-144. Special requirements if county merger recommended. (1) Whenever county merger is recommended, a petition, in addition to the material required by 7-3-142, must contain a consolidation plan which:

(a) provides for adjustment of existing bonded indebtedness and other obligations in a manner which assures a fair and equitable burden of taxation for debt service;

(b) provides for establishment of subordinate service districts;

(c) provides for the transfer or other disposition of property and other rights, claims, assets, and franchises of local governments consolidated under the alternative plan;

(d) provides the official name of the consolidated local government; and

(e) (i) provides for the transfer, reorganization, abolition, adjustment of boundaries, or absorption of existing boards, subordinate service districts, local improvement districts, agencies, and political subdivisions of the consolidated governments, excluding school districts, authorities, and incorporated municipalities; or

(ii) grants the legislative body of the consolidated government the authority to transfer, reorganize, abolish, adjust boundaries, or absorb existing boards, subordinate service districts, local improvement districts, agencies, and political subdivisions of the consolidated governments, excluding school districts, authorities, and incorporated municipalities, with or without referendum requirements.

(2) The consolidation plan may include other provisions that are consistent with state law.

History: En. Sec. 9, Ch. 675, L. 1979.

Cross-References

Change in county boundary — constitutional requirements, Art. XI, sec. 2, Mont. Const.

Abandonment and consolidation of counties, Title 7, ch. 2, part 27.

7-3-145. Special requirements if municipal disincorporation recommended. Whenever municipal disincorporation is recommended, a petition, in addition to the material required by 7-3-142, must contain:

(1) a certificate of disincorporation instead of a plan of government; and

(2) a recommended plan of disincorporation.

History: En. Sec. 10, Ch. 675, L. 1979.

Cross-References

Disincorporation of municipalities, Title 7, ch. 2, part 49.

7-3-146. Filing of petitions. (1) Two copies of a petition shall be filed with the department of commerce.

(2) One copy of a petition shall be filed with the local government records administrator.

(3) The filings required by this section shall be done within 45 days of submission of the petition.

History: En. Sec. 11, Ch. 675, L. 1979; amd. Sec. 7, Ch. 274, L. 1981; amd. Sec. 1, Ch. 287, L. 1983.

7-3-147. Availability of petitions. (1) Sufficient copies of a petition proposing alterations to an existing form of local government must be made available to the public for inspection at convenient locations and at reasonable hours to provide all interested persons an opportunity to review the recommendations and documents. The copies must be available no later than 30 days prior to an election on the recommendations if such an election is to be held. The local government may distribute copies of a petition to the electors or residents of the local government.

(2) The cost of preparing the copies needed to meet the requirements of this section shall be borne by the affected local government.

History: En. Sec. 12, Ch. 675, L. 1979.

7-3-148. Publication of summary and comparison. (1) A summary of the recommendations contained in a petition proposing alteration of an existing form of local government must be published at least twice in a newspaper of general circulation in the local government. Whenever an election on the recommendations is to be held, publication must be made during the 2 weeks preceding the election.

(2) The summary must contain a description of the recommendations, a comparison of the existing and proposed forms of government, and a list of locations where the full proposal may be seen or obtained.

(3) The cost of publication required by this section shall be borne by the affected local government.

History: En. Sec. 13, Ch. 675, L. 1979.

7-3-149. Election on alternative form. (1) The governing body shall call a special election on the question of an alternative form of government to be held at the next regular or primary election that is at least 75 days after the call and the date of filing with the records administrator under 7-3-146. The records administrator shall prepare and print notices of the election.

(2) The cost of the election must be paid for by the local government.

(3) (a) The affirmative vote of a simple majority of those voting on the question is required for adoption.

(b) In any election involving the question of consolidation, each question must be submitted to the electors in the county and requires an affirmative vote of a simple majority of the votes cast in the county on the question for adoption. There is no requirement for separate majorities in local governments voting on consolidation.

(c) In any election involving the question of county merger, the questions must be submitted to the electors in the counties affected and require a majority of the votes cast on the questions in each affected county for adoption.

(d) If the electors disapprove the proposed new form of local government, amendments, or consolidation plan, the local government retains its existing form.

History: En. Sec. 14, Ch. 675, L. 1979; amd. Sec. 1, Ch. 214, L. 1983; amd. Sec. 4, Ch. 250, L. 1985; amd. Sec. 8, Ch. 387, L. 1995.

Compiler's Comments

1995 Amendment: Chapter 387 in first sentence of (1), after "held at", inserted "the next regular or primary election that is at" and before "the date" deleted "within 120 days of", deleted former second sentence that read: "The special election may be held in conjunction with any other election", and at end of second sentence, before "election", deleted "special"; and made minor changes in style.

Cross-References

Change in county boundary — separate majorities required, Art. XI, sec. 2, Mont. Const.

Special elections — notice, 13-1-108.

7-3-150. General ballot requirements. (1) The question of adopting an alteration of an existing form of government proposed by petition shall be submitted to the electors in substantially the following form:

Vote for one:

☐ FOR adoption of the (self-government charter, amendment to an existing charter, or plan of government) proposed for (insert name of local government) proposed by petition of the people.

☐ FOR the existing form of government.

(2) The whole number of ballots shall be divided into two equal sets. No more than one set may be used in printing the ballot for use in any one precinct and all ballots furnished for use in one precinct shall be identical. The existing plan of government shall be printed as the first item and the proposed plan as the second item on half of the ballots and the proposed form as the first item and the existing form as the second item on the other half of the ballots. If the local government consists of only one precinct, the existing plan shall be listed first on the ballot.

History: En. Sec. 15, Ch. 675, L. 1979.

7-3-151. Treatment of suboptions for alternative forms. (1) No petition recommendation may involve more than three separate suboptions, and no suboption may contain more than two alternatives. If a suboption is submitted to the voters, only the ballot alternatives within that suboption receiving the highest number of affirmative votes are considered approved and included in the alternative form of government. If the alternative form of government fails, a suboption is of no effect.

(2) A proposed plan shall be submitted to the voters as a single question, except that the suboptions within the alternative plan of local government

authorized in Title 7, chapter 3, parts 1 through 6, and the suboptions authorized in a charter may be submitted to the electors as separate questions. The question of adopting a suboption shall be submitted to the electors in substantially the following form:

Vote for one:
A legal officer (who may be called the "county attorney"):

☐ Shall be elected for a term of 4 years.

☐ Shall be appointed for a term of 4 years by the chairman of the local governing body.

History: **En. Sec. 16, Ch. 675, L. 1979; amd. Sec. 22, Ch. 575, L. 1981; amd. Sec. 27, Ch. 697, L. 1983.**

7-3-152. Effect of adoption of new form of government. The adoption of a new plan of government does not affect the validity of any bond, debt, contract, obligation, or cause of action accrued or established under the prior form of government.

History: **En. Sec. 17, Ch. 675, L. 1979.**

Cross-References

Effect of change in government, 7-3-106.

7-3-153. Filing of approved plan. (1) A copy of the existing or proposed plan of government ratified by the voters and any apportionment plan or consolidation or merger plan shall be certified by the chairman of the governing body and filed with the department of commerce, the county records administrator, and the municipal records administrator if it is a municipal plan.

(2) The approved plan filed with the department of commerce is the official plan and is a public record open to inspection by the public and judicially noticeable by all courts.

History: **En. Sec. 18, Ch. 675, L. 1979; amd. Sec. 7, Ch. 274, L. 1981; amd. Sec. 1, Ch. 287, L. 1983.**

Cross-References

Right to examine public documents, Art. II, sec. 9, Mont. Const.

7-3-154. Judicial review. Judicial review to determine the validity of the procedures whereby any charter or alternative plan of government is adopted may be initiated by petition in district court of 10 or more registered voters of the local government brought within 60 days after the election at which the charter or plan of government, revision, or amendment is approved. If no petition is filed within that period, compliance with all the procedures required by 7-3-121 through 7-3-161 and the validity of the manner in which the charter or plan of government was approved is conclusively presumed. It is presumed that proper procedure was followed and all procedural requirements were met. The adoption of a charter or plan of government may not be considered invalid because of any procedural error or omission unless it is shown that the error or omission materially and substantially affected its adoption.

History: **En. Sec. 19, Ch. 675, L. 1979.**

Cross-References

Conclusive presumptions — effect, 26-1-601; Rule 301, M.R.Ev. (see Title 26, ch. 10).

7-3-155. Three-year moratorium. (1) Unless the constitution requires otherwise, the electors of any unit of local government which has voted upon the question of changing the form of local government, charter, or consolidation plan or upon the question of amending the alternative form, charter, or consolidation plan may not vote on the question of changing or amending the form of local government for 3 years.

(2) For the purposes of this section, general election dates are considered to be 1 year apart and may be used in computing the 3-year moratorium. No election on the question of changing an alternative form of a unit of local government may be challenged as failing to conform with the moratorium provisions of this section because 3 full calendar years may not have elapsed.

History: En. Sec. 20, Ch. 675, L. 1979; amd. Sec. 1, Ch. 404, L. 1983.

Cross-References

Constitutional provision on review of local governments — 10-year period, Art. XI, sec. 9, Mont. Const.

Limitation on change in alternative form, 7-3-104.

7-3-156. Effective date of alternative plan or amendment. (1) An alternative plan of local government approved by the electors takes effect when the new officers take office, except as otherwise provided in any charter or consolidation plan. A consolidation or merger plan adopted by the electors takes effect in the same manner.

(2) Provisions creating offices and establishing qualifications for office under any apportionment plan become effective immediately for the purpose of electing officials.

(3) An amendment to an existing plan of government becomes effective at the beginning of the local government's fiscal year commencing after the election results are officially declared.

History: En. Sec. 21, Ch. 675, L. 1979.

Cross-References

Effective date of change of local government, 7-3-103.

Start of county officer's term of office, 7-4-2205.

Start of municipal officer's term of office, 7-4-4107.

Local government fiscal years, 7-6-2201, 7-6-4101.

7-3-157. General transition provisions. (1) The governing body shall prepare an advisory plan for orderly transition to a new plan of local government. The transition plan may propose necessary ordinances, plans for consolidation of services and functions, and a plan for reorganizing boards, departments, and agencies.

(2) The governing body of a local government may enact and enforce ordinances to bring about an orderly transition to the new plan of government, including transfer of powers, records, documents, properties, assets, funds, liabilities, or personnel. These ordinances are to be consistent with the approved plan and necessary or convenient to place it into full effect. Whenever a question arises concerning transition which is not provided for, the governing

body may provide for the transition by ordinance, rule, or resolution not inconsistent with law.

History: **En. Sec. 22, Ch. 675, L. 1979.**

Cross-References

Effect of change in government, 7-3-106.

7-3-158. Transition provisions affecting personnel. (1) The members of the governing body holding office on the date the new plan of government is adopted by the electors of the local government continue in office and in the performance of their duties until the governing body authorized by the plan has been elected and qualified, whereupon the prior governing body is abolished.

(2) All other employees holding offices or positions, whether elective or appointive, under the government of the county or municipality continue in the performance of the duties of their respective offices and positions until provisions are made for the performance or discontinuance of the duties or the discontinuance of the offices or positions.

(3) A charter or a petition proposing an alteration to an existing form of local government may provide that existing elected officers shall continue in office until the end of the term for which they were elected or may provide that existing elected officers shall be retained as local government employees until the end of the term for which they were elected, and their salaries may not be reduced.

History: **En. Sec. 23, Ch. 675, L. 1979; amd. Sec. 23, Ch. 575, L. 1981.**

7-3-159. Treatment of existing ordinances and resolutions. (1) All ordinances and resolutions in effect at the time the new form of government becomes effective continue in effect until repealed or amended in the manner provided by law.

(2) Within 2 years after ratification of a consolidation plan, the governing body of the consolidated local government shall revise, repeal, or reaffirm all rules, ordinances, and resolutions in force within the participating county and municipalities at the time of consolidation. Each rule, ordinance, or resolution in force at the time of consolidation remains in force within the former geographic jurisdiction until superseded by action of the new governing body. Ordinances and resolutions relating to public improvements to be paid for in whole or in part by special assessments may not be repealed.

History: **En. Sec. 24, Ch. 675, L. 1979.**

Cross-References

Effect of change in government, 7-3-106.

7-3-160. Election of new officials. (1) Within 20 days after an election at which the new plan of government is approved by the electors, the governing body of the local government shall meet and order a special primary and general election for the purpose of electing the officials required by the new form of government. The elections for officials may be held in conjunction with any other election.

(2) The order shall specify:

(a) a date for the primary election to be held no later than the next regularly scheduled city or county primary election; and

(b) a date for the general election to be held no later than the next regularly scheduled city or county general election following the primary election date established under subsection (2)(a).

History: En. Sec. 25, Ch. 675, L. 1979; amd. Sec. 5, Ch. 250, L. 1985; amd. Sec. 1, Ch. 8, Sp. L. March 1986.

Cross-References

Times for holding general elections, 13-1-104.

Times for holding primary elections, 13-1-107.

Special elections — notice, 13-1-108.

7-3-161. Organization of new governing body. (1) The first meeting of a new governing body for a new plan of government shall be held at 10 a.m., 60 days after the election of the new officers. At that time, newly elected members shall take the oath of office prior to assuming the duties of office.

(2) If the terms of the commissioners are to be overlapping, they shall draw lots to establish their respective terms of office.

History: En. Sec. 26, Ch. 675, L. 1979.

Cross-References

Oath of office, Art. III, sec. 3, Mont. Const.; 7-4-101.

7-3-162 through 7-3-170 reserved.

7-3-171. Purpose. The purpose of 7-3-171 through 7-3-193 is to provide a mechanism for local government review as required by Article XI, section 9, of the Montana constitution.

History: En. Sec. 1, Ch. 697, L. 1983.

7-3-172. Purpose of study commission. The purpose of a study commission is to study the existing form and powers of a local government and procedures for delivery of local government services and compare them with other forms available under the laws of the state.

History: En. Sec. 2, Ch. 697, L. 1983.

7-3-173. Establishment of study commissions. (1) A study commission may be established by an affirmative vote of the people. An election on the question of conducting a local government review and establishing a study commission shall be held:

(a) whenever the governing body of the local government unit calls for an election by resolution;

(b) whenever a petition signed by at least 15% of the electors of the local government calling for an election is submitted to the governing body; or

(c) in 1984 and thereafter whenever 10 years have elapsed since the electors have voted on the question of conducting a local government review and establishing a study commission.

(2) The governing body shall call for an election, to be held on the primary election date, on the question of conducting a local government review and establishing a study commission:

(a) in 1984 to implement the provisions of Article XI, section 9(2), of the Montana constitution as provided in section 2, Chapter 70, Laws of 1977;

(b) within 1 year after the 10-year period referred to in subsection (1)(c).

History: En. Sec. 3, Ch. 697, L. 1983.

7-3-174. Election procedures. (1) Votes cast on the question of establishing a study commission and for electing study commission members shall be counted, canvassed, and returned as provided in Title 13 for general elections.

(2) The election administrator shall report the results of all elections conducted under 7-3-171 through 7-3-193 to the secretary of state within 15 days of the date the results become official.

History: En. Sec. 4, Ch. 697, L. 1983.

7-3-175. Election on question of establishing study commission. (1) The question of conducting a local government review and establishing a study commission shall be submitted to the electors in substantially the following form:

Vote for one:

☐ FOR the review of the government of (insert name of local government) and the establishment of a local government study commission consisting of (insert number of members) members to examine the government of (insert name of local government) and submit recommendations thereon.

☐ AGAINST the review of the government of (insert name of local government) and the establishment of a study commission.

(2) The question of conducting a local government review and establishing a study commission requires an affirmative vote of a majority of those voting on the question for passage.

(3) Except for elections to be conducted pursuant to 7-3-173(2), a special election on the question of reviewing a local government and establishing a study commission shall be held no sooner than 60 days and no later than 90 days after the passage of a resolution or the certification of a petition calling for an election on the question.

History: En. Sec. 5, Ch. 697, L. 1983.

7-3-176. Election of commission members. (1) If the question of reviewing the local government and establishing a study commission is approved, an election to fill the positions on the local government study commission must be held in conjunction with the first regularly scheduled election of the local government conducted after 90 days following the election establishing the study commission. A primary election may not be held.

(2) The names of study commission candidates who have filed declarations of nomination not later than 75 days before the date of the election must be placed on the ballot. There is no filing fee. The election is nonpartisan, and candidates must be listed without party or other designation or slogan. The secretary of state shall prescribe the ballot form for study commissioners.

(3) Candidates for study commission positions must be electors of the local government for which the study commission has been established. The candidates may not be elected officials of the local government.

(4) The number of candidates, equal to the number of study commission positions to be elected, receiving the highest number of votes, which includes

votes cast for candidates who have officially filed nominations and votes for write-in candidates, must be declared elected. If there is a tie vote among candidates, the governing body shall decide by lot which candidate will fill the position.

(5) If the number of study commissioners elected is not equal to the number required to be selected, the presiding officer of the governing body, with the confirmation of the governing body, shall appoint the additional study commissioners within 20 days of the election. An elected official of the local government may not be appointed.

History: **En. Sec. 6, Ch. 697, L. 1983; amd. Sec. 6, Ch. 250, L. 1985; amd. Sec. 1, Ch. 435, L. 1985; amd. Sec. 9, Ch. 387, L. 1995.**

Compiler's Comments

1995 Amendment: Chapter 387 in (1), near middle before "first", deleted "1984 general election date or at the"; and made minor changes in style.

7-3-177. Composition of study commission. (1) The number of positions, which must be an odd number of not less than three, on the study commission shall be set out in the resolution or petition calling for the election on the question of reviewing the local government or local governments and establishing a study commission. If the election is called under the provisions of 7-3-173(1)(c), the study commission shall consist of three members unless the local governing body by resolution declares that a larger number shall be elected.

(2) Every study commission shall include as an ex officio nonvoting member a member of the governing body or an elected official or employee of the local government appointed by the governing body. The ex officio member must be appointed prior to the organization of the study commission provided for in 7-3-179.

History: **En. Sec. 7, Ch. 697, L. 1983; amd. Sec. 2, Ch. 435, L. 1985.**

7-3-178. Term of office — vacancies — compensation. (1) The term of office of study commission members begins on the day their election to the study commission is declared or certified under 13-15-405 or on the day of their appointment and ends on the day of the vote on the alternative plan. If the alternative plan is adopted, the term continues for 90 days after the day of the vote on the alternative plan. If the commission recommends no alternative plan, the term ends 30 days after submission of the final report in accordance with 7-3-187.

(2) A vacancy on a study commission, including an ex officio member vacancy, shall be determined in the same manner as a vacancy in municipal office as provided in 7-4-4111. A vacancy on a study commission shall be filled by appointment by the governing body of the local government being studied by the commission. The appointment shall be made within 30 days of the date the vacancy occurs.

(3) Members of the study commission may receive no compensation other than for actual and necessary expenses incurred in their official capacity.

History: **En. Secs. 8, 9, 10, Ch. 697, L. 1983; amd. Sec. 3, Ch. 435, L. 1985.**

7-3-179. Organization of commission. (1) Not later than 10 days after all members of the study commission have been elected or appointed, the study commission shall meet and organize at a time set by the chairman of the governing body of the local government which the study commission is to examine.

(2) At the first meeting of the study commission, the study commission may elect a temporary chairman, who will serve until a permanent chairman is selected.

History: En. Sec. 11, Ch. 697, L. 1983.

7-3-180. Cooperation of study commissions. (1) Any two or more study commissions may cooperate in the conduct of their studies. A majority vote by each of the affected study commissions is required for a cooperative study.

(2) Cooperative studies do not preclude each study commission from making a separate report and recommendation.

History: En. Sec. 12, Ch. 697, L. 1983.

7-3-181. Conduct of business. (1) Meetings of the study commission must be held upon the call of the presiding officer, the vice presiding officer in the absence or inability of the presiding officer, or a majority of the members. The presiding officer shall announce the time and place of the meetings of the study commission.

(2) The study commission shall maintain a written record of its proceedings and its finances. This record is open to inspection by a person at the office of the study commission during the office hours determined by the governing body by resolution after a public hearing and only if consented to by the presiding officer.

(3) A majority of the members of the study commission constitutes a quorum for the transaction of business, but a recommendation of a study commission does not have legal effect unless adopted by a majority of the whole number of members of the study commission.

(4) The study commission may adopt rules for its own organization and procedure.

History: En. Sec. 13, Ch. 697, L. 1983; amd. Sec. 1, Ch. 216, L. 1995.

Compiler's Comments

1995 Amendment: Chapter 216 at end of (2) inserted clause allowing governing body to determine office hours after public hearing; and made minor changes in style.

7-3-182. Open meetings and public involvement. All meetings of the study commission are open to the public as provided in Title 2, chapter 3, part 2. The study commission shall hold public hearings and community forums and may use other suitable means to disseminate information, receive suggestions and comments, and stimulate public discussion of its purpose, progress, conclusions, and recommendations.

History: En. Sec. 14, Ch. 697, L. 1983.

7-3-183. Commission powers. (1) A study commission may employ and fix the compensation and duties of necessary staff. State, municipal, and county officers and employees, at the request of the study commission and with the consent of the employing agency, may be granted leave with or without pay from their agency to serve as consultants to the study commission. If leave with pay is granted, they may receive no other compensation from the study commission except mileage and per diem.

(2) A study commission may contract and cooperate with other agencies, public or private, as it considers necessary for assistance in carrying out the purposes for which the commission was established. Upon request of the chairman of the study commission, state agencies, counties, and other local governments and the officers and employees thereof shall furnish or make available to the commission such information as may be necessary for carrying out the commission's function.

(3) A study commission may:

(a) establish advisory boards and committees, including on them persons who are not members of the study commission;

(b) retain consultants; and

(c) do any other act consistent with and reasonably required to perform its function.

History: En. Sec. 15, Ch. 697, L. 1983.

7-3-184. Financial administration. (1) A study commission shall prepare a budget for each fiscal year it is in existence and submit it to the local governing body for approval.

(2) (a) For the support of the study commission, for each fiscal year the study commission is in existence, each local government under study shall appropriate an amount necessary to fund the study, not to exceed 1 mill, and the local government may levy up to 1 mill in excess of all other mill levies authorized by law to fund the appropriation for the support of the study commission.

(b) The local government shall provide office and meeting space and clerical assistance to the study commission. The cost of clerical assistance and other in-kind services provided by the local government may be used to partially fulfill the appropriation requirement of subsection (2)(a).

(c) The local government may in its discretion provide additional funds and other assistance.

(3) The study commission may apply for and accept available private, state, and federal money and may accept donations from any source.

(4) All money received by the study commission shall be deposited with the local government finance administrator. The finance administrator is authorized to disburse appropriated money of the study commission on the study commission's order after approval of the budget by the governing body. Unexpended money of the study commission does not revert to the general fund of the local government at the end of the fiscal year but carries over to the study commission's appropriation for the following fiscal year. Upon termination of the study commission, unexpended money reverts to the general fund of the local government.

History: En. Sec. 16, Ch. 697, L. 1983; amd. Sec. 1, Ch. 395, L. 1991.

7-3-185. Scope of study commission recommendations. (1) (a) A study commission examining the government of a county may:

(i) recommend amendments to the existing plan of government;

(ii) recommend any plan of government authorized by Title 7, chapter 3, parts 1 through 6;

(iii) draft a charter;

(iv) recommend municipal-county consolidation or amendments to an existing consolidation;

(v) in cooperation with a study commission in an adjoining county, recommend county merger; or

(vi) submit no recommendation.

(b) In addition to one of the items in subsection (1)(a), a county study commission may recommend service consolidation or transfer in cooperation with a study commission of another county or with a study commission of one or more municipalities.

(2) (a) A study commission examining the government of a municipality may:

(i) recommend amendments to the existing plan of government;

(ii) recommend any plan of government authorized by Title 7, chapter 3, parts 1 through 6;

(iii) draft a charter;

(iv) recommend municipal-county consolidation;

(v) recommend disincorporation; or

(vi) submit no recommendation.

(b) In addition to one of the items in subsection (2)(a), a municipal study commission may recommend service consolidation or transfer in cooperation with:

(i) a county study commission;

(ii) a county study commission and one or more municipal study commissions; or

(iii) one or more municipal study commissions.

History: **En. Sec. 17, Ch. 697, L. 1983; amd. Sec. 4, Ch. 435, L. 1985.**

7-3-186. Study commission timetable. (1) Each local government study commission shall, within 90 days of its organizational meeting, establish a timetable for its deliberations and actions. The timetable must be published in a local newspaper of general circulation. The timetable may be revised, but each revision must be republished.

(2) The timetable must provide, at a minimum, the following provisions, to be accomplished chronologically in the order presented:

(a) conduct one or more public hearings for the purpose of gathering information regarding the current form, functions, and problems of local government;

(b) formulate, reproduce, and distribute a tentative report, containing the same categories of information required to be included in the final report;

(c) conduct one or more public hearings on the tentative report;

(d) adopt the final report of the commission and set the date for a special election on the question of adopting a new plan of government or, if the study commission is not recommending any changes, publish and distribute the final report as provided in 7-3-187 within 60 days after the final report is adopted. The special election must be held in conjunction with a regular or primary election.

History: **En. Sec. 18, Ch. 697, L. 1983; amd. Sec. 10, Ch. 387, L. 1995.**

Compiler's Comments

1995 Amendment: Chapter 387 in (2)(d), at end, inserted "The special election must be held in conjunction with a regular or primary election."

7-3-187. Final report. (1) A study commission shall adopt a final report. If the study commission recommends an alternative form of government, the final report must contain the following materials and documents, each signed by a majority of the study commission members:

(a) those materials and documents required of a petition proposing an alteration of an existing form of government in 7-3-142;

(b) a certificate establishing the date of the special election, which must be held in conjunction with a regular or primary election, at which the alternative form of government is presented to the electors and a certificate establishing the form of the ballot question or questions; and

(c) a certificate establishing the dates of the first primary and general elections for officers of a new government if the proposal is approved and establishing the effective date of the proposal if approved.

(2) The final report must contain any minority report signed by members of the commission who do not support the majority proposal.

(3) If the study commission is not recommending any changes, its final report must indicate that changes are not recommended.

(4) The study commission shall file two copies of the final report with the department of commerce, one of which the department shall forward to the state library. A copy of the final report must be certified by the study commission to the municipal or county records administrator within 30 days after the adoption of the final report.

(5) Sufficient copies of the final report must be prepared for public distribution. The final report must be available to the electors not later than 30 days prior to the election on the issue of adopting the alternative plan. Copies of the final report may be distributed to electors or residents of the local government or governments affected.

(6) After submission of the final report, the commission shall deposit copies of its minutes and other records with the county clerk and recorder.

History: En. Sec. 19, Ch. 697, L. 1983; amd. Sec. 5, Ch. 435, L. 1985; amd. Sec. 11, Ch. 387, L. 1995.

Compiler's Comments

1995 Amendment: Chapter 387 in (1)(b), after "with a", substituted "regular or primary" for "regularly scheduled"; at end of (3) inserted "that changes are not recommended"; and made minor changes in style.

7-3-188. Special final report requirements — consolidation or county merger. (1) Consolidation or merger may be placed on the ballot only by a joint report by cooperative study commissions.

(2) A final report, in addition to the material required in 7-3-187, must contain a consolidation plan if county-municipal consolidation or county merger is recommended. The consolidation plan must conform to the provisions and requirements relating to petitions in:

(a) 7-3-143 whenever county-municipal consolidation is recommended; or

(b) 7-3-144 whenever county merger is recommended.

History: En. Sec. 20, Ch. 697, L. 1983.

7-3-189. Special final report requirements for disincorporation. If a study commission proposes municipal disincorporation, the final report shall contain the following additional material and documents:

(1) a certificate of disincorporation instead of a plan of government; and

(2) a recommended plan of disincorporation.

History: **En. Sec. 21, Ch. 697, L. 1983.**

7-3-190. Supplementary reports. A study commission may prepare separate reports in addition to its final report. These reports may recommend consolidation of services and functions and indicate potential areas for interlocal agreements. Such reports shall be submitted to all appropriate governing bodies for reaction within 1 year.

History: **En. Sec. 22, Ch. 697, L. 1983; amd. Sec. 6, Ch. 435, L. 1985.**

7-3-191. Publication of summary. Each study commission shall publish once each week for 2 successive weeks in a newspaper of general circulation throughout the area of the affected local government a summary of its findings and recommendations, together with the address of a convenient public place where the text of its proposal may be obtained. The summary shall include a comparison of the existing and proposed plans of government.

History: **En. Sec. 23, Ch. 697, L. 1983.**

7-3-192. Election on recommendation. (1) An alternative plan of government recommended by a study commission must be submitted to the voters as provided in 7-3-149. The election must be held in conjunction with any regularly scheduled election.

(2) General ballot requirements and treatment of suboptions on an alternative plan of government recommended by a study commission must be the same as for recommendations by petition as provided in 7-3-150 and 7-3-151.

History: **En. Sec. 24, Ch. 697, L. 1983; amd. Sec. 7, Ch. 250, L. 1985; amd. Sec. 12, Ch. 387, L. 1995.**

Compiler's Comments

1995 Amendment: Chapter 387 in first sentence of (1), after "7-3-149", deleted "except that the study commission shall authorize the submission of the alternative plan of government to the voters at a special election to be held no less than 75 or more than 120 days from the date of the adoption of the final report", at beginning of second sentence, before the first "election", deleted "special" and after "election" substituted "must" for "may", and deleted third sentence that read: "Study commissions elected on the general election date in 1984 shall submit a final report allowing for a vote on any recommendation no later than the general election date in 1986"; and made minor changes in style.

7-3-193. Application of other sections. (1) Except as provided in subsection (2), 7-3-122 and 7-3-152 through 7-3-161 apply to the adoption of an alternative plan of government upon recommendation by a study commission.

(2) (a) The chairman of the study commission and not the chairman of the governing body shall certify documents under 7-3-153.

(b) The study commission and not the governing body shall prepare an advisory plan for orderly transition to a new plan of local government under 7-3-157.

(c) A study commission plan may provide for existing elected officers under 7-3-158(3).

History: **En. Sec. 25, Ch. 697, L. 1983.**

Part 2
Commission-Executive Government

Part Cross-References

Statutory basis for "existing" municipal council-mayor government, 7-3-113.

Strong mayor municipal government, Title 7, ch. 3, part 41.

Municipal commission-mayor government, Title 7, ch. 3, part 42.

7-3-201. Commission-executive form. The commission-executive form (which may be called the council-executive, the council-mayor, or the commission-mayor form) consists of an elected commission (which may be referred to as the council) and one elected executive (who may be referred to as the mayor) who is elected at large.

History: En. 47A-3-203 by Sec. 1, Ch. 344, L. 1975; amd. Sec. 1, Ch. 351, L. 1977; R.C.M. 1947, 47A-3-203(1).

7-3-202. Nature of government. The plan of government submitted to the qualified electors shall determine the powers of the local government unit by authorizing:

(1) general government powers; or

(2) self-government powers.

History: En. 47A-3-203 by Sec. 1, Ch. 344, L. 1975; amd. Sec. 1, Ch. 351, L. 1977; R.C.M. 1947, 47A-3-203(4).

Cross-References

General government powers, Art. XI, sec. 4, Mont. Const.; 7-1-2103 (counties), 7-1-4124 (municipalities).

Self-government powers, Art. XI, sec. 6, Mont. Const.; Title 7, ch. 1, part 1.

7-3-203. Duties of executive. The executive shall:

(1) enforce laws, ordinances, and resolutions;

(2) perform duties required of him by law, ordinance, or resolution;

(3) administer affairs of the local government;

(4) carry out policies established by the commission;

(5) recommend measures to the commission;

(6) report to the commission on the affairs and financial condition of the local government;

(7) execute bonds, notes, contracts, and written obligations of the commission, subject to the approval of the commission;

(8) report to the commission as the commission may require;

(9) attend commission meetings and may take part in discussions;

(10) execute the budget adopted by the commission;

(11) appoint, with the consent of the commission, all members of boards; except the executive may appoint without the consent of the commission temporary advisory committees established by the executive.

History: En. 47A-3-203 by Sec. 1, Ch. 344, L. 1975; amd. Sec. 1, Ch. 351, L. 1977; R.C.M. 1947, 47A-3-203(2).

7-3-204 through 7-3-210 reserved.

7-3-211. Structural suboptions. The plan of government submitted to the qualified electors shall further define the structural characteristics of the form by including one item from each of the choices listed in 7-3-212 through 7-3-224.

History: **En. 47A-3-203 by Sec. 1, Ch. 344, L. 1975; amd. Sec. 1, Ch. 351, L. 1977; R.C.M. 1947, 47A-3-203(part).**

7-3-212. Administrative assistants. The executive:

(1) shall appoint one or more administrative assistants to assist him in the supervision and operation of the local government, and such administrative assistants shall be answerable solely to the executive; or

(2) may appoint one or more administrative assistants to assist him in the supervision and operation of the local government, and such administrative assistants shall be answerable solely to the executive.

History: **En. 47A-3-203 by Sec. 1, Ch. 344, L. 1975; amd. Sec. 1, Ch. 351, L. 1977; R.C.M. 1947, 47A-3-203(3)(a).**

7-3-213. Supervision of personnel. The executive may:

(1) appoint and remove all employees of the local government;

(2) appoint and remove, with the consent of a majority of the commission, all employees of the local government;

(3) appoint, with the consent of a majority of the commission, all department heads and remove department heads and may appoint and remove all other department employees; or

(4) appoint and remove, with the consent of a majority of the commission, all department heads and appoint and remove all other employees of the local government.

History: **En. 47A-3-203 by Sec. 1, Ch. 344, L. 1975; amd. Sec. 1, Ch. 351, L. 1977; R.C.M. 1947, 47A-3-203(3)(b).**

7-3-214. Veto power. The executive may:

(1) veto ordinances and resolutions, subject to override by a majority plus one of the whole number of the commission;

(2) veto ordinances and resolutions, subject to override by a two-thirds vote of the commission; or

(3) sign all ordinances and resolutions with no veto power.

History: **En. 47A-3-203 by Sec. 1, Ch. 344, L. 1975; amd. Sec. 1, Ch. 351, L. 1977; R.C.M. 1947, 47A-3-203(3)(c).**

7-3-215. Preparation of budget. The executive may:

(1) prepare the budget and present it to the commission for adoption; or

(2) prepare the budget in consultation with the commission and department heads.

History: **En. 47A-3-203 by Sec. 1, Ch. 344, L. 1975; amd. Sec. 1, Ch. 351, L. 1977; R.C.M. 1947, 47A-3-203(3)(d).**

7-3-216. Administrative supervision and control. The executive may:

(1) exercise control and supervision of the administration of all departments and boards; or

(2) exercise control and supervision of all departments and boards to the degree authorized by ordinance of the commission.

History: **En. 47A-3-203 by Sec. 1, Ch. 344, L. 1975; amd. Sec. 1, Ch. 351, L. 1977; R.C.M. 1947, 47A-3-203(3)(e).**

7-3-217. Financial officer. A financial officer (who may be called the treasurer):

(1) shall be elected;

(2) shall be appointed by the executive with the consent of the council;

(3) shall be selected as provided by ordinance; or

(4) may, at the discretion of the commission, be selected as provided by ordinance.

History: **En. 47A-3-203 by Sec. 1, Ch. 344, L. 1975; amd. Sec. 1, Ch. 351, L. 1977; R.C.M. 1947, 47A-3-203(3)(f).**

7-3-218. Selection of commission members. The commission shall be:

(1) elected at large;

(2) elected by districts in which candidates must reside and which are apportioned by population;

(3) elected at large and nominated by a plan of nomination that may not preclude the possibility of the majority of the electors nominating candidates for the majority of the seats on the commission from persons residing in the district or districts where the majority of the electors reside; or

(4) elected by any combination of districts, in which candidates must reside and which are apportioned by population, and at large.

History: **En. 47A-3-203 by Sec. 1, Ch. 344, L. 1975; amd. Sec. 1, Ch. 351, L. 1977; R.C.M. 1947, 47A-3-203(3)(g).**

7-3-219. Type of election. Local government elections shall be conducted on a:

(1) partisan basis; or

(2) nonpartisan basis.

History: **En. 47A-3-203 by Sec. 1, Ch. 344, L. 1975; amd. Sec. 1, Ch. 351, L. 1977; R.C.M. 1947, 47A-3-203(3)(h); amd. Sec. 3, Ch. 79, L. 1983.**

Cross-References

Nonpartisan elections, Title 13, ch. 14.

7-3-220. Chairman of commission. The commission shall have a chairman who shall be:

(1) elected by the members of the commission from their own number for a term established by ordinance; or

(2) selected as provided by ordinance.

History: **En. 47A-3-203 by Sec. 1, Ch. 344, L. 1975; amd. Sec. 1, Ch. 351, L. 1977; R.C.M. 1947, 47A-3-203(3)(i).**

7-3-221. Presiding officer of commission. The presiding officer of the commission shall be:

(1) the chairman of the commission, who may vote as other members of the commission;

(2) the executive, who may vote as the commissioners;

(3) the executive, who shall decide all tie votes of the commission but shall have no other vote (the chairman of the commission shall preside if the executive is absent); or

(4) the executive, but he may not vote.

History: **En. 47A-3-203 by Sec. 1, Ch. 344, L. 1975; amd. Sec. 1, Ch. 351, L. 1977; R.C.M. 1947, 47A-3-203(3)(j).**

7-3-222. Terms of commission members. Commission members shall be elected for:

(1) concurrent terms of office; or

(2) overlapping terms of office.

History: **En. 47A-3-203 by Sec. 1, Ch. 344, L. 1975; amd. Sec. 1, Ch. 351, L. 1977; R.C.M. 1947, 47A-3-203(3)(k).**

7-3-223. Size of commission and community councils. The size of the commission, which shall be a number not less than three, shall be established when the form is adopted by the voters, and:

(1) community councils of at least three members shall be elected within each district to advise the commissioner from that district. Local governments conducting elections at large shall district according to population for the purpose of electing community councils; or

(2) community councils to advise commissioners may be authorized by ordinance.

History: En. 47A-3-203 by Sec. 1, Ch. 344, L. 1975; amd. Sec. 1, Ch. 351, L. 1977; R.C.M. 1947, 47A-3-203(3)(l).

7-3-224. Terms of elected officials. The term of office of elected officials may not exceed 4 years and shall be established when the form is adopted by the voters.

History: En. 47A-3-203 by Sec. 1, Ch. 344, L. 1975; amd. Sec. 1, Ch. 351, L. 1977; R.C.M. 1947, 47A-3-203(3)(m).

Cross-References

Transition of elected officials, 7-3-158.

Part 3

Commission-Manager Government

Part Cross-References

Municipal commission-manager government, Title 7, ch. 3, parts 43 and 44.

7-3-301. Commission-manager form. The commission-manager form (which may be called the council-manager form) consists of an elected commission (which may be called the council) and a manager appointed by the commission, who shall be the chief administrative officer of the local government. The manager shall be responsible to the commission for the administration of all local government affairs placed in his charge by law, ordinance, or resolution.

History: En. 47A-3-204 by Sec. 1, Ch. 344, L. 1975; amd. Sec. 2, Ch. 351, L. 1977; R.C.M. 1947, 47A-3-204(1).

7-3-302. Nature of government. The plan of government submitted to the qualified electors shall determine the powers of the local government unit by authorizing:

(1) general government powers; or

(2) self-government powers.

History: En. 47A-3-204 by Sec. 1, Ch. 344, L. 1975; amd. Sec. 2, Ch. 351, L. 1977; R.C.M. 1947, 47A-3-204(7).

7-3-303. Appointment of manager. The manager shall be appointed by the commission for an indefinite term on the basis of merit only and removed only by a majority vote of the whole number of the commission.

History: En. 47A-3-204 by Sec. 1, Ch. 344, L. 1975; amd. Sec. 2, Ch. 351, L. 1977; R.C.M. 1947, 47A-3-204(2).

Cross-References

General government powers, Art. XI, sec. 4, Mont. Const.; 7-1-2103 (counties), 7-1-4124 (municipalities).

Self-government powers, Art. XI, sec. 6, Mont. Const.; Title 7, ch. 1, part 1.

7-3-304. Duties of manager. The manager shall:

(1) enforce laws, ordinances, and resolutions;

(2) perform the duties required of him by law, ordinance, or resolution;

(3) administer the affairs of the local government;

(4) direct, supervise, and administer all departments, agencies, and offices of the local government unit except as otherwise provided by law or ordinance;

(5) carry out policies established by the commission;

(6) prepare the commission agenda;

(7) recommend measures to the commission;

(8) report to the commission on the affairs and financial condition of the local government;

(9) execute bonds, notes, contracts, and written obligations of the commission, subject to the approval of the commission;

(10) report to the commission as the commission may require;

(11) attend commission meetings and may take part in the discussion, but he may not vote;

(12) prepare and present the budget to the commission for its approval and execute the budget adopted by the commission;

(13) appoint, suspend, and remove all employees of the local government except as otherwise provided by law or ordinance;

(14) appoint members of temporary advisory committees established by the manager.

History: En. 47A-3-204 by Sec. 1, Ch. 344, L. 1975; amd. Sec. 2, Ch. 351, L. 1977; R.C.M. 1947, 47A-3-204(part).

7-3-305. Employees of commission-manager government. (1) Employees appointed by the manager and his subordinates shall be administratively responsible to the manager.

(2) Neither the commission nor any of its members may dictate the appointment or removal of any employee whom the manager or any of his subordinates are empowered to appoint.

(3) Except for the purpose of inquiry or investigation under this title, the commission or its members shall deal with the local government employees who are subject to the direction and supervision of the manager solely through the manager, and neither the commission nor its members may give orders to any such employee, either publicly or privately.

History: En. 47A-3-204 by Sec. 1, Ch. 344, L. 1975; amd. Sec. 2, Ch. 351, L. 1977; R.C.M. 1947, 47A-3-204(part).

7-3-306 through 7-3-310 reserved.

7-3-311. Structural suboptions. The plan of government submitted to the qualified electors shall further define the structural characteristics of the form by including one item from each of the choices listed in 7-3-312 through 7-3-318.

History: En. 47A-3-204 by Sec. 1, Ch. 344, L. 1975; amd. Sec. 2, Ch. 351, L. 1977; R.C.M. 1947, 47A-3-204(part).

7-3-312. Appointment to boards. All members of boards, other than temporary advisory committees established by the manager, shall be appointed by:

(1) the chairman with the consent of the commission; or

(2) the manager with the consent of the commission; or

(3) the commission.

History: **En. 47A-3-204 by Sec. 1, Ch. 344, L. 1975; amd. Sec. 2, Ch. 351, L. 1977; R.C.M. 1947, 47A-3-204(6)(a).**

7-3-313. Selection of commission members. The commission shall be:

(1) elected at large;

(2) elected by districts in which candidates must reside and which are apportioned by population;

(3) elected at large and nominated by a plan of nomination that may not preclude the possibility of the majority of the electors nominating candidates for the majority of the seats on the commission from persons residing in the district or districts where the majority of the electors reside; or

(4) elected by any combination of districts, in which candidates must reside and which are apportioned by population, and at large.

History: **En. 47A-3-204 by Sec. 1, Ch. 344, L. 1975; amd. Sec. 2, Ch. 351, L. 1977; R.C.M. 1947, 47A-3-204(6)(b).**

7-3-314. Type of election. Local government elections shall be conducted on a:

(1) partisan basis; or

(2) nonpartisan basis.

History: **En. 47A-3-204 by Sec. 1, Ch. 344, L. 1975; amd. Sec. 2, Ch. 351, L. 1977; R.C.M. 1947, 47A-3-204(6)(c); amd. Sec. 4, Ch. 79, L. 1983.**

Cross-References

Nonpartisan elections, Title 13, ch. 14.

7-3-315. Chairman of commission. The chairman of the commission shall be:

(1) elected by the members of the commission from their own number for a term established by ordinance;

(2) elected by the qualified electors for a term of office; or

(3) selected as provided by ordinance.

History: **En. 47A-3-204 by Sec. 1, Ch. 344, L. 1975; amd. Sec. 2, Ch. 351, L. 1977; R.C.M. 1947, 47A-3-204(6)(d).**

7-3-316. Terms of commission members. Commission members shall be elected for:

(1) concurrent terms of office; or

(2) overlapping terms of office.

History: **En. 47A-3-204 by Sec. 1, Ch. 344, L. 1975; amd. Sec. 2, Ch. 351, L. 1977; R.C.M. 1947, 47A-3-204(6)(e).**

7-3-317. Size of commission and community councils. The size of the commission, which shall be a number not less than three, shall be established when the form is adopted by the voters, and:

(1) community councils of at least three members shall be elected within each district to advise the commissioner from that district. Local governments conducting elections at large shall district according to population for the purpose of electing community councils; or

(2) community councils to advise commissioners may be authorized by ordinance.

History: **En. 47A-3-204 by Sec. 1, Ch. 344, L. 1975; amd. Sec. 2, Ch. 351, L. 1977; R.C.M. 1947, 47A-3-204(6)(f).**

7-3-318. Terms of elected officials. The term of office of elected officials may not exceed 4 years and shall be established when the form is adopted by the voters.

History: En. 47A-3-204 by Sec. 1, Ch. 344, L. 1975; amd. Sec. 2, Ch. 351, L. 1977; R.C.M. 1947, 47A-3-204(6)(g).

Cross-References

Transition of elected officials, 7-3-158.

Part 4
Commission Government

Part Cross-References

Constitutional recognition of County Commission form of government, Art. XI, sec. 3(2), Mont. Const.

Statutory basis for "existing" elected county official government, 7-3-111.

7-3-401. Commission form. The commission form consists of an elected commission (which may also be called the council) and other elected officers as provided in this part. All legislative, executive, and administrative powers and duties of the local government not specifically reserved by law or ordinance to other elected officers shall reside in the commission. The commission shall appoint the heads of departments and other employees, except for those appointed by other elected officials. Cities and towns which adopt this form may distribute by ordinance the executive and administrative powers and duties into departments headed by individual commissioners.

History: En. 47A-3-205 by Sec. 1, Ch. 344, L. 1975; amd. Sec. 3, Ch. 351, L. 1977; R.C.M. 1947, 47A-3-205(1).

7-3-402. Nature of government. Local governments that adopt this form shall have general government powers.

History: En. 47A-3-205 by Sec. 1, Ch. 344, L. 1975; amd. Sec. 3, Ch. 351, L. 1977; R.C.M. 1947, 47A-3-205(4).

Cross-References

General government powers, Art. XI, sec. 4, Mont. Const.; 7-1-2103 (counties), 7-1-4124 (municipalities).

7-3-403. Role of chairman of commission. The chairman of the commission, who may be referred to as the mayor, shall be the presiding officer of the commission. All members of boards and committees shall be appointed by the chairman with the consent of the commission. The chairman shall be recognized as the head of the local government unit and may vote as other members of the commission.

History: En. 47A-3-205 by Sec. 1, Ch. 344, L. 1975; amd. Sec. 3, Ch. 351, L. 1977; R.C.M. 1947, 47A-3-205(part).

7-3-404 through 7-3-410 reserved.

7-3-411. General structural suboptions. The plan of government submitted to the qualified electors shall further define the structural characteristics of the form by including one item from each of the choices listed in 7-3-412 through 7-3-418.

History: En. 47A-3-205 by Sec. 1, Ch. 344, L. 1975; amd. Sec. 3, Ch. 351, L. 1977; R.C.M. 1947, 47A-3-205(part).

7-3-412. Selection of commission members. The commission shall be:

(1) elected at large;

(2) elected by districts in which candidates must reside and which are apportioned by population;

(3) elected at large and nominated by a plan of nomination that may not preclude the possibility of the majority of the electors nominating candidates for the majority of the seats on the commission from persons residing in the district or districts where the majority of the electors reside; or

(4) elected by any combination of districts, in which candidates must reside and which are apportioned by population, and at large.

History: En. 47A-3-205 by Sec. 1, Ch. 344, L. 1975; amd. Sec. 3, Ch. 351, L. 1977; R.C.M. 1947, 47A-3-205(2)(a).

7-3-413. Type of election. Local government elections shall be conducted on a:

(1) partisan basis; or

(2) nonpartisan basis.

History: En. 47A-3-205 by Sec. 1, Ch. 344, L. 1975; amd. Sec. 3, Ch. 351, L. 1977; R.C.M. 1947, 47A-3-205(2)(b); amd. Sec. 5, Ch. 79, L. 1983.

Cross-References

Nonpartisan elections, Title 13, ch. 14.

7-3-414. Chairman of commission. The chairman of the commission shall be:

(1) elected by the members of the commission from their own number for a term established by ordinance;

(2) selected as provided by ordinance; or

(3) elected directly by the voters for a term established by ordinance.

History: En. 47A-3-205 by Sec. 1, Ch. 344, L. 1975; amd. Sec. 3, Ch. 351, L. 1977; R.C.M. 1947, 47A-3-205(part).

7-3-415. Administrative assistants. The commission:

(1) shall appoint one or more administrative assistants to assist them in the supervision and operation of the local government; or

(2) may appoint one or more administrative assistants to assist them in the supervision and operation of the local government.

History: En. 47A-3-205 by Sec. 1, Ch. 344, L. 1975; amd. Sec. 3, Ch. 351, L. 1977; R.C.M. 1947, 47A-3-205(2)(d).

7-3-416. Terms of commission members. Commission members shall be elected for:

(1) concurrent terms of office; or

(2) overlapping terms of office.

History: En. 47A-3-205 by Sec. 1, Ch. 344, L. 1975; amd. Sec. 3, Ch. 351, L. 1977; R.C.M. 1947, 47A-3-205(2)(e).

7-3-417. Size of commission and community councils. The size of the commission, which shall be a number not less than three, shall be established when the form is adopted by the voters, and:

(1) community councils of at least three members shall be elected within each district to advise the commissioner from that district. Local governments conducting elections at large shall district according to population for the purpose of electing community councils; or

(2) community councils to advise commissioners may be authorized by ordinance.

History: En. 47A-3-205 by Sec. 1, Ch. 344, L. 1975; amd. Sec. 3, Ch. 351, L. 1977; R.C.M. 1947, 47A-3-205(2)(f).

7-3-418. Terms of elected officials. The term of office of elected officials may not exceed 4 years, except the term of office for commissioners in counties adopting the form authorized by Article XI, section 3(2), of the Montana constitution may not exceed 6 years. Terms of office shall be established when the form is adopted by the voters.

History: En. 47A-3-205 by Sec. 1, Ch. 344, L. 1975; amd. Sec. 3, Ch. 351, L. 1977; R.C.M. 1947, 47A-3-205(2)(g).

7-3-419 through 7-3-430 reserved.

7-3-431. Additional structural suboptions for county and consolidated governments. In county and consolidated local governments, the plan of government submitted to the qualified electors shall further define the structural characteristics of the form by including one item from each of the choices listed in 7-3-432 through 7-3-442. The officers shall have the powers and duties established by ordinance. After the establishment of any office, the commission may consolidate, as provided by law, two or more of the offices.

History: En. 47A-3-205 by Sec. 1, Ch. 344, L. 1975; amd. Sec. 3, Ch. 351, L. 1977; R.C.M. 1947, 47A-3-205(part).

7-3-432. Legal officer. A legal officer (who may be called the county attorney):

(1) shall be elected;

(2) shall be appointed by the local government commission;

(3) shall be appointed by the chairman of the local government commission;

(4) shall be selected as provided by ordinance;

(5) may at the discretion of the commission be selected as provided by ordinance; or

(6) shall not be included in this form as a separate office.

History: En. 47A-3-205 by Sec. 1, Ch. 344, L. 1975; amd. Sec. 3, Ch. 351, L. 1977; R.C.M. 1947, 47A-3-205(3)(a).

7-3-433. Law enforcement officer. A law enforcement officer (who may be called the sheriff):

(1) shall be elected;

(2) shall be appointed by the local government commission;

(3) shall be appointed by the chairman of the local government commission;

(4) shall be selected as provided by ordinance;

(5) may at the discretion of the commission be selected as provided by ordinance; or

(6) shall not be included in this form as a separate office.

History: En. 47A-3-205 by Sec. 1, Ch. 344, L. 1975; amd. Sec. 3, Ch. 351, L. 1977; R.C.M. 1947, 47A-3-205(3)(b).

7-3-434. Clerk and recorder. A clerk and recorder:

(1) shall be elected;

(2) shall be appointed by the local government commission;

(3) shall be appointed by the chairman of the local government commission;

(4) shall be selected as provided by ordinance;

(5) may at the discretion of the commission be selected as provided by ordinance; or

(6) shall not be included in this form as a separate office.

History: En. 47A-3-205 by Sec. 1, Ch. 344, L. 1975; amd. Sec. 3, Ch. 351, L. 1977; R.C.M. 1947, 47A-3-205(3)(c).

7-3-435. Clerk of district court. A clerk of district court:

(1) shall be elected;

(2) shall be appointed by the local government commission;

(3) shall be appointed by the chairman of the local government commission;

(4) shall be selected as provided by ordinance;

(5) may at the discretion of the commission be selected as provided by ordinance; or

(6) shall not be included in this form as a separate office.

History: En. 47A-3-205 by Sec. 1, Ch. 344, L. 1975; amd. Sec. 3, Ch. 351, L. 1977; R.C.M. 1947, 47A-3-205(3)(d).

7-3-436. Treasurer. A treasurer:

(1) shall be elected;

(2) shall be appointed by the local government commission;

(3) shall be appointed by the chairman of the local government commission;

(4) shall be selected as provided by ordinance;

(5) may at the discretion of the commission be selected as provided by ordinance; or

(6) shall not be included in this form as a separate office.

History: En. 47A-3-205 by Sec. 1, Ch. 344, L. 1975; amd. Sec. 3, Ch. 351, L. 1977; R.C.M. 1947, 47A-3-205(3)(e).

7-3-437. Surveyor. A surveyor:

(1) shall be elected;

(2) shall be appointed by the local government commission;

(3) shall be appointed by the chairman of the local government commission;

(4) shall be selected as provided by ordinance;

(5) may at the discretion of the commission be selected as provided by ordinance; or

(6) shall not be included in this form as a separate office.

History: En. 47A-3-205 by Sec. 1, Ch. 344, L. 1975; amd. Sec. 3, Ch. 351, L. 1977; R.C.M. 1947, 47A-3-205(3)(f).

7-3-438. Superintendent of schools. A superintendent of schools:

(1) shall be elected;

(2) shall be appointed by the local government commission;

(3) shall be appointed by the chairman of the local government commission;

(4) shall be selected as provided by ordinance;

(5) may at the discretion of the commission be selected as provided by ordinance; or

(6) shall not be included in this form as a separate office.

History: En. 47A-3-205 by Sec. 1, Ch. 344, L. 1975; amd. Sec. 3, Ch. 351, L. 1977; R.C.M. 1947, 47A-3-205(3)(g).

7-3-439. Assessor. An assessor:

(1) shall be elected;

(2) shall be appointed by the local government commission;

(3) shall be appointed by the chairman of the local government commission;

(4) shall be selected as provided by ordinance;

(5) may at the discretion of the commission be selected as provided by ordinance; or

(6) shall not be included in this form as a separate office.

History: En. 47A-3-205 by Sec. 1, Ch. 344, L. 1975; amd. Sec. 3, Ch. 351, L. 1977; R.C.M. 1947, 47A-3-205(3)(h).

7-3-440. Coroner. A coroner:

(1) shall be elected;

(2) shall be appointed by the local government commission;

(3) shall be appointed by the chairman of the local government commission;

(4) shall be selected as provided by ordinance;

(5) may at the discretion of the commission be selected as provided by ordinance; or

(6) shall not be included in this form as a separate office.

History: En. 47A-3-205 by Sec. 1, Ch. 344, L. 1975; amd. Sec. 3, Ch. 351, L. 1977; R.C.M. 1947, 47A-3-205(3)(i).

7-3-441. Public administrator. A public administrator:

(1) shall be elected;

(2) shall be appointed by the local government commission;

(3) shall be appointed by the chairman of the local government commission;

(4) shall be selected as provided by ordinance;

(5) may at the discretion of the commission be selected as provided by ordinance; or

(6) shall not be included in this form as a separate office.

History: En. 47A-3-205 by Sec. 1, Ch. 344, L. 1975; amd. Sec. 3, Ch. 351, L. 1977; R.C.M. 1947, 47A-3-205(3)(j).

7-3-442. Auditor. An auditor:

(1) shall be elected;

(2) shall be appointed by the local government commission;

(3) shall be appointed by the chairman of the local government commission;

(4) shall be selected as provided by ordinance;

(5) may at the discretion of the commission be selected as provided by ordinance; or

(6) shall not be included in this form as a separate office.

History: En. 47A-3-205 by Sec. 1, Ch. 344, L. 1975; amd. Sec. 3, Ch. 351, L. 1977; R.C.M. 1947, 47A-3-205(3)(k).

Part 5
Commission-Chairman Government

7-3-501. Commission-chairman form. The commission-chairman form consists of an elected commission (which may also be referred to as the council) and a commission-chairman (who may also be referred to as mayor or as president) elected by the members of the commission from their own number and serving at the pleasure of the commission.

History: En. 47A-3-206 by Sec. 1, Ch. 344, L. 1975; amd. Sec. 4, Ch. 351, L. 1977; R.C.M. 1947, 47A-3-206(part).

7-3-502. Nature of government. The plan of government submitted to the qualified electors shall determine the powers of the local government unit by authorizing:

(1) general government powers; or

(2) self-government powers.

History: En. 47A-3-206 by Sec. 1, Ch. 344, L. 1975; amd. Sec. 4, Ch. 351, L. 1977; R.C.M. 1947, 47A-3-206(4).

Cross-References

General government powers, Art. XI, sec. 4, Mont. Const.; 7-1-2103 (counties), 7-1-4124 (municipalities).

Self-government powers, Art. XI, sec. 6, Mont. Const.; Title 7, ch. 1, part 1.

7-3-503. Role and duties of chairman. The commission chairman shall:

(1) be the presiding officer of the commission, be recognized as the head of the local government unit, have the power to vote as other members of the commission, be the chief executive officer of the local government; and

(2) enforce laws, ordinances, and resolutions;

(3) perform duties required of him by law, ordinance, or resolution;

(4) administer the affairs of the local government;

(5) direct, supervise, and administer all departments, agencies, and offices of the local government except as otherwise provided by law or ordinance;

(6) carry out policies established by the commission;

(7) prepare the commission agenda;

(8) recommend measures to the commission;

(9) report to the commission on the affairs and financial condition of the local government;

(10) execute bonds, notes, contracts, and written obligations of the commission, subject to the approval of the commission;

(11) report to the commission as the commission may require;

(12) attend commission meetings and may take part in discussions;

(13) execute the budget adopted by the commission;

(14) appoint, with the consent of the commission, all members of boards and committees; except the chairman may appoint without the consent of the commission temporary advisory committees established by the chairman;

(15) appoint, with the consent of a majority of the commission, all department heads, and the chairman may remove department heads and may appoint and remove all other employees;

(16) prepare the budget and present it to the commission for adoption;

(17) exercise control and supervision over the administration of departments and boards.

History: En. 47A-3-206 by Sec. 1, Ch. 344, L. 1975; amd. Sec. 4, Ch. 351, L. 1977; R.C.M. 1947, 47A-3-206(part).

7-3-504 through 7-3-510 reserved.

7-3-511. Structural suboptions. The plan of government submitted to the qualified electors shall further define the structural characteristics of the form by including one item from each of the choices listed in 7-3-512 through 7-3-517.

History: En. 47A-3-206 by Sec. 1, Ch. 344, L. 1975; amd. Sec. 4, Ch. 351, L. 1977; R.C.M. 1947, 47A-3-206(part).

7-3-512. Selection of commission members. The commission shall be:

(1) elected at large;

(2) elected by districts in which candidates must reside and which are apportioned by population;

(3) elected at large and nominated by a plan of nomination that may not preclude the possibility of the majority of the electors nominating candidates for the majority of the seats on the commission from persons residing in the district or districts where the majority of the electors reside; or

(4) elected by any combination of districts, in which candidates must reside and which are apportioned by population, and at large.

History: En. 47A-3-206 by Sec. 1, Ch. 344, L. 1975; amd. Sec. 4, Ch. 351, L. 1977; R.C.M. 1947, 47A-3-206(3)(a).

7-3-513. Type of election. Local government elections shall be conducted on a:

(1) partisan basis; or

(2) nonpartisan basis.

History: En. 47A-3-206 by Sec. 1, Ch. 344, L. 1975; amd. Sec. 4, Ch. 351, L. 1977; R.C.M. 1947, 47A-3-206(3)(b); amd. Sec. 6, Ch. 79, L. 1983.

Cross-References

Nonpartisan elections, Title 13, ch. 14.

7-3-514. Administrative assistants. The commission chairman:

(1) shall appoint one or more administrative assistants to assist him in the supervision and operation of the local government, and such administrative assistants shall be answerable solely to the chairman; or

(2) may appoint one or more administrative assistants to assist him in the supervision and operation of the local government, and such administrative assistants shall be answerable solely to the chairman.

History: En. 47A-3-206 by Sec. 1, Ch. 344, L. 1975; amd. Sec. 4, Ch. 351, L. 1977; R.C.M. 1947, 47A-3-206(3)(c).

7-3-515. Terms of commission members. Commission members shall be elected for:

(1) concurrent terms of office; or

(2) overlapping terms of office.

History: En. 47A-3-206 by Sec. 1, Ch. 344, L. 1975; amd. Sec. 4, Ch. 351, L. 1977; R.C.M. 1947, 47A-3-206(3)(d).

7-3-516. Size of commission and community councils. The size of the commission, which shall be a number not less than five, shall be established when the form is adopted by the voters, and:

(1) community councils of at least three members shall be elected within each district to advise the commissioner from that district. Local governments conducting elections at large shall district according to population for the purpose of electing community councils; or

(2) community councils to advise commissioners may be authorized by ordinance.

History: En. 47A-3-206 by Sec. 1, Ch. 344, L. 1975; amd. Sec. 4, Ch. 351, L. 1977; R.C.M. 1947, 47A-3-206(3)(e).

7-3-517. Terms of elected officials. The term of office of elected officials may not exceed 4 years and shall be established when the form is adopted by the voters.

History: En. 47A-3-206 by Sec. 1, Ch. 344, L. 1975; amd. Sec. 4, Ch. 351, L. 1977; R.C.M. 1947, 47A-3-206(3)(f).

Cross-References

Transition of elected officials, 7-3-158.

Part 6
Town Meeting Government

7-3-601. Town meeting form. (1) The town meeting form consists of an assembly of the qualified electors of a town (known as a town meeting), an elected town chairman, who shall be a qualified elector, and an optional elected town meeting moderator.

(2) The town meeting form may be adopted only by incorporated cities of less than 2,000 persons and incorporated towns of less than 2,000 persons, as determined by the most recent decennial census as conducted by the United States bureau of the census unless a more recent enumeration of inhabitants be made by the state, in which case such enumeration shall be used for the purposes of this part. Any unit of local government which adopts this form may retain it even though its population increases to more than 2,000.

(3) All legislative powers of the town shall vest in the town meeting. The town meeting may enact rules, resolutions, and ordinances.

History: En. 47A-3-207 by Sec. 1, Ch. 344, L. 1975; R.C.M. 1947, 47A-3-207(1), (2); amd. Sec. 1, Ch. 275, L. 1987.

Cross-References

Qualified electors, Art. IV, sec. 2, Mont. Const.; 13-1-111.

Legislative powers, 7-1-4123.

7-3-602. Nature of government. The plan of government submitted to the qualified electors shall determine the powers of the local government unit by authorizing:

(1) general government powers; or

(2) self-government powers.

History: En. 47A-3-207 by Sec. 1, Ch. 344, L. 1975; R.C.M. 1947, 47A-3-207(11).

Cross-References

General government powers, Art. XI, sec. 4, Mont. Const.; 7-1-4124.

Self-government powers, Art. XI, sec. 6, Mont. Const.; Title 7, ch. 1, part 1.

7-3-603. Holding of town meeting. (1) Towns adopting this form shall convene an annual town meeting on the first Tuesday of March. Special town meetings may be called by the town chairman or upon petition of 10% of the qualified electors of the town, but in no case by less than 10 qualified electors.

(2) All qualified electors of the town may attend the town meeting, take part in the discussion, and vote on all matters coming before the town meeting. Others may attend but shall not vote or take part in the discussion except by a majority vote of the town meeting.

(3) A quorum shall consist of at least 10% of the qualified electors of the town, but a higher quorum requirement may be established by a majority vote of the town meeting.

(4) The election of town officials shall be nonpartisan and shall be by a plurality of those qualified electors present and voting. All other voting in the town meeting shall be by a simple majority of those qualified electors present and voting.

(5) Election of officials shall be by secret ballot. Other voting shall be by secret ballot upon the request of at least five members of the town meeting.

History: En. 47A-3-207 by Sec. 1, Ch. 344, L. 1975; R.C.M. 1947, 47A-3-207(3).

7-3-604. Meeting agenda. An agenda of the town meeting and a list of all elective and appointive offices to be filled shall be prepared by the town chairman, who shall post notice at least 2 weeks prior to the convening of all annual and special town meetings. Upon written petition of at least 10% of the qualified electors of the town but not less than 10 qualified electors, the town chairman shall insert a particular item or items in the agenda for the next annual or special town meeting. The town meeting agenda may include an item entitled "other business" under which any matter may be considered by the town meeting, except no matter dealing with finance or taxation shall be considered under "other business".

History: En. 47A-3-207 by Sec. 1, Ch. 344, L. 1975; R.C.M. 1947, 47A-3-207(4).

Cross-References

Notice, 7-1-4128.

Posting notice, 7-1-4135.

7-3-605. Agenda and conduct of initial town meeting. The first agenda of the first town meeting following the adoption of this form shall be established by the local study commission. At that town meeting the chairman of the local study commission shall preside over the election of the presiding officer of the town, after which the presiding officer of the town shall preside.

History: En. 47A-3-207 by Sec. 1, Ch. 344, L. 1975; R.C.M. 1947, 47A-3-207(10).

7-3-606. Selection, role, and duties of town chairman. (1) The town meeting shall elect a town chairman for a term of not less than 1 year or more than 2 years. An unexpired term of a town chairman shall be filled at the next annual or special town meeting.

(2) The town chairman shall be the chief executive officer of the town, and he shall:

(a) enforce laws, ordinances, and resolutions;

(b) perform duties required of him by law, ordinance, or resolution;

(c) administer the affairs of the town;

(d) prepare the town meeting agenda;

(e) attend all annual and special town meetings;

(f) recommend measures to the town meeting;

(g) report to the town on the affairs and financial condition of the town;

(h) execute bonds, notes, contracts, and written obligations of the town, subject to the approval of the town;

(i) appoint, with the consent of the town meeting, members of all boards and appoint and remove all employees of the town;

(j) prepare the budget and present it to the town meeting for adoption;

(k) exercise control and supervision of the administration of all departments and boards;

(l) carry out policies established by the town meeting.

(3) Compensation of the town chairman shall be established by ordinance but shall not be reduced during the current term of the town chairman.

History: **En. 47A-3-207 by Sec. 1, Ch. 344, L. 1975; R.C.M. 1947, 47A-3-207(5) thru (7).**

7-3-607. Committees. Permanent committees to advise the town chairman and/or the town meeting may be established and dissolved by ordinance. The town chairman may establish temporary committees to advise him.

History: **En. 47A-3-207 by Sec. 1, Ch. 344, L. 1975; R.C.M. 1947, 47A-3-207(8).**

7-3-608 through 7-3-610 reserved.

7-3-611. Structural suboptions. The plan of government submitted to the qualified electors shall further define the structural characteristics of the form by including one item from each of the choices listed in 7-3-612 and 7-3-613.

History: **En. 47A-3-207 by Sec. 1, Ch. 344, L. 1975; R.C.M. 1947, 47A-3-207(part).**

7-3-612. Town meeting moderator. The town meeting shall:

(1) elect a town meeting moderator for a term of 1 year, who shall be the presiding officer of all annual and special town meetings but who shall have no other governmental powers; or

(2) designate the town chairman as presiding officer of all annual and special town meetings.

History: **En. 47A-3-207 by Sec. 1, Ch. 344, L. 1975; R.C.M. 1947, 47A-3-207(9)(a).**

7-3-613. Administrative assistant. (1) The town chairman:

(a) shall appoint an administrative assistant to assist him in the supervision and operation of the affairs of the town; or

(b) may appoint an administrative assistant to assist him in the supervision and operation of the affairs of the town.

(2) The administrative assistant shall be answerable solely to the town chairman, and the town chairman may delegate powers to the administrative assistant at his discretion.

History: **En. 47A-3-207 by Sec. 1, Ch. 344, L. 1975; R.C.M. 1947, 47A-3-207(9)(b).**

Part 7
Charter Government

7-3-701. Charter form. (1) The purpose of this part is to comply with Article XI, section 5(1), of the Montana constitution, which provides: "The legislature shall provide procedures permitting a local government unit or combination of units to frame, adopt, amend, revise, or abandon a self-government charter with the approval of a majority of those voting on the question. The procedures shall not require approval of a charter by a legislative body."

(2) Charter provisions establishing executive, legislative, and administrative structure and organization are superior to statutory provisions.

History: En. 47A-3-208 by Sec. 1, Ch. 344, L. 1975; amd. Sec. 5, Ch. 351, L. 1977; R.C.M. 1947, 47A-3-208(1), (2).

7-3-702. Nature of government. A charter form of government shall possess self-government powers.

History: En. 47A-3-208 by Sec. 1, Ch. 344, L. 1975; amd. Sec. 5, Ch. 351, L. 1977; R.C.M. 1947, 47A-3-208(3).

Cross-References

Self-government powers, Art. XI, sec. 6, Mont. Const.; Title 7, ch. 1, part 1.

7-3-703. Charter required. (1) Charter form of government shall be established by a charter which is a written document defining the powers, structures, privileges, rights, and duties of the unit of local government and limitations thereon.

(2) The enumeration of powers in a charter shall not be construed as a limitation or prohibition on the residual or self-governing powers granted by the constitution.

History: En. 47A-3-208 by Sec. 1, Ch. 344, L. 1975; amd. Sec. 5, Ch. 351, L. 1977; R.C.M. 1947, 47A-3-208(4), (13).

Cross-References

Constitutional grant of powers, Art. XI, sec. 6, Mont. Const.

7-3-704. Legislative body. (1) The charter shall provide for an elected legislative body (called a commission or council) or shall provide for a legislative body comprised of all qualified electors. For elected legislative bodies, the charter shall specify the number of members thereof, their term of office, election on a partisan or nonpartisan basis, the grounds for their removal, and the method for filling vacancies.

(2) The charter shall provide for the nomination and election of commissions:

(a) at large;

(b) by districts in which candidates must reside and which are apportioned by population;

(c) by a combination of districts, in which candidates must reside and which are apportioned by population, and at large; or

(d) elected at large and nominated by a plan of nomination that may not preclude the possibility of the majority of the electors nominating candidates for the majority of the seats on the commission from persons residing in the district or districts where the majority of the electors reside.

History: En. 47A-3-208 by Sec. 1, Ch. 344, L. 1975; amd. Sec. 5, Ch. 351, L. 1977; R.C.M. 1947, 47A-3-208(5), (6).

Cross-References

Legislative powers — general powers government, 7-1-4123.

Nonpartisan elections, Title 13, ch. 14.

7-3-705. Officials and personnel. (1) The charter shall specify which official of the local government will be the chief administrative and executive officer, the method of his selection, his term of office (except that it may be at the pleasure of the selecting authority if such officer is not elected by popular vote), the grounds for his removal, and his powers and duties. Notwithstanding the foregoing, the charter may allocate the chief executive and the chief administrative functions among two or more officials specified as above or the charter may provide that chief executive and administrative functions of the local government will be performed by one or more members of the legislative body.

(2) A charter form of government shall have such officers, departments, boards, commissions, and agencies as are established in the charter, by local ordinance, or required by state law.

History: En. 47A-3-208 by Sec. 1, Ch. 344, L. 1975; amd. Sec. 5, Ch. 351, L. 1977; R.C.M. 1947, 47A-3-208(7), (9).

Cross-References

Functions required by state law, 7-1-114.

7-3-706. Effective date. The charter shall specify the date on which the charter will take effect, except that provisions may be made for temporary partial effectiveness consistent with an orderly transition of government.

History: En. 47A-3-208 by Sec. 1, Ch. 344, L. 1975; amd. Sec. 5, Ch. 351, L. 1977; R.C.M. 1947, 47A-3-208(16).

Cross-References

Transition provisions, 7-3-158.

7-3-707. Other charter provisions. (1) The charter may establish other legislative, administrative, and organizational structures.

(2) The charter may contain prohibitions on the exercise of power by a unit of local government.

(3) The charter may include such provisions as may be necessary to permit an orderly transition to the new form of government.

(4) The listing of charter provisions in this part shall not be construed to prevent the inclusion of additional provisions in charters.

History: En. 47A-3-208 by Sec. 1, Ch. 344, L. 1975; amd. Sec. 5, Ch. 351, L. 1977; R.C.M. 1947, 47A-3-208(8), (14), (15), (17).

7-3-708. Limitations on charter provisions. (1) Charter provisions may not conflict with the provisions of part 1, chapter 1, which establish statutory limitations on the powers of self-government units.

(2) Charter forms are subject to state laws establishing election, initiative, and referendum procedures; and charters shall not contain provisions establishing election, initiative, and referendum procedures.

(3) The charter shall not contain provisions establishing or modifying local court systems.

History: En. 47A-3-208 by Sec. 1, Ch. 344, L. 1975; amd. Sec. 5, Ch. 351, L. 1977; R.C.M. 1947, 47A-3-208(10) thru (12).

Cross-References

Local court systems, Title 3, ch. 6 (Municipal Courts); Title 3, ch. 10 (Justices' Courts); Title 3, ch. 11 (City Courts).

Initiative and referendum, Title 7, ch. 5, part 1.

Election provisions, Title 13.

7-3-709. Amendment of charter. A charter may be amended only as provided by state law.

History: En. 47A-3-208 by Sec. 1, Ch. 344, L. 1975; amd. Sec. 5, Ch. 351, L. 1977; R.C.M. 1947, 47A-3-208(18).

Cross-References

Amendment of charter, 7-3-103.

Parts 8 through 10 reserved

Part 11

City-County Consolidation — Option 1

Part Cross-References

Disincorporation of municipalities, Title 7, ch. 2, part 49.

Special requirements for proposal of consolidation, 7-3-143.

Operational status of self-government city-county consolidated local governments, 7-5-201.

7-3-1101. City-county consolidation authorized. (1) A county and a city or town within the county may unite to form a single unit of local government under the provisions of this part.

(2) An alternative form of government, including a charter form, for a consolidated unit of government may be submitted to the voters only by those study commissions that have cooperated in the formulation of the plan. A majority vote by each of the affected study commissions is required for the submission of an alternative form of government for a consolidated unit of local government. The affected study commissions submitting a consolidated form shall issue a single joint report and proposal.

(3) An alternative form of government for a consolidated unit of local government does not need to include more than one municipality. A municipality may not be included unless the local government study commission of that municipality participates in the cooperative study and unless its study commission by a majority vote approves the proposed alternative plan for the consolidated government.

(4) This part shall not apply to excluded municipalities, school districts, conservancy districts, drainage districts, irrigation districts, soil and water conservation districts, or livestock districts.

History: En. 16-5115.3 by Sec. 6, Ch. 513, L. 1975; R.C.M. 1947, 16-5115.3(part); amd. Sec. 2, Ch. 262, L. 1979.

Cross-References

Vote requirements for consolidation, 7-3-149.

Town meeting form not applicable to counties, 7-3-601.

7-3-1102. Plan of consolidation. (1) Study commissions proposing consolidation shall prepare, adopt, and submit to the voters a consolidation plan in addition to the alternative form of government. If the commission proposes a charter, the plan may be included in the charter.

(2) The consolidation plan shall:

(a) provide for adjustment of existing bonded indebtedness and other obligations in a manner which will provide for a fair and equitable burden of taxation for debt service;

(b) provide for establishment of service areas;

(c) provide for the transfer or other disposition of property and other rights, claims, assets, and franchises of local governments consolidated under the alternative form;

(d) provide the official name of the consolidated unit of local government;

(e) provide for the transfer, reorganization, abolition, absorption, adjustment of boundaries (and may provide a method for adjusting the boundaries) of all existing boards, bureaus, commissions, agencies, special districts, and political subdivisions of the consolidated governments;

(f) include other provisions which the study commission elects to include and which are consistent with state law.

(3) The plan may grant the legislative body of the consolidated government the authority to transfer, reorganize, adjust boundaries, abolish, or absorb, and provide a method for adjusting the boundaries of such entities with or without referendum requirements.

History: **En. 16-5115.3 by Sec. 6, Ch. 513, L. 1975; R.C.M. 1947, 16-5115.3(part).**

7-3-1103. Effect of consolidation. (1) As a political subdivision of the state, such consolidated unit of local government shall have the status of a county and an incorporated municipality for all purposes and shall replace and be the successor of the county and any city or town.

(2) On its effective date, the alternative form of government and consolidation plan operate to dissolve all local governments within the area of consolidation in accordance with their provisions. On the effective date, the separate corporate existence of the county and of each participating city and/or town shall be consolidated and merged into one local government unit under the name selected, designated, and adopted as provided in this chapter. The consolidated local government shall thereupon succeed to, possess, and own all of the property and assets of every kind and description and shall, except as otherwise provided, become responsible for all of the obligations and liabilities of the county, cities, and towns so consolidated and merged.

(3) All provisions of law authorizing contributions of any kind, in money or otherwise, from the state or federal government to counties and cities shall remain in full force with respect to a consolidated local government.

History: **En. 16-5115.3 by Sec. 6, Ch. 513, L. 1975; R.C.M. 1947, 16-5115.3(5), (8).**

7-3-1104. General powers of consolidated local governments. A consolidated local government shall have and may exercise all powers that are conferred on counties, cities, or towns by the constitution and laws of the state. The consolidated local government may levy all taxes which counties, cities, and towns are authorized to levy.

History: **En. 16-5115.3 by Sec. 6, Ch. 513, L. 1975; R.C.M. 1947, 16-5115.3(6).**

7-3-1105. Rules, ordinances, and resolutions of consolidated unit. Within 2 years after ratification of the consolidation, the governing body of the consolidated unit of local government shall revise, repeal, or reaffirm all rules, ordinances, and resolutions in force within the participating county, cities, and towns at the time of consolidation. Each rule, ordinance, or resolution in force at the time of consolidation shall remain in force within the former geographic jurisdiction until superseded by action of the new governing body. Ordinances and resolutions relating to public improvements to be paid for in whole or in part by special assessments may not be repealed.

History: En. 16-5115.3 by Sec. 6, Ch. 513, L. 1975; R.C.M. 1947, 16-5115.3(7).

Part 12
City-County Consolidation — Option 2

Part Cross-References

Operational status of self-government city-county consolidated local governments, 7-5-201.

7-3-1201. Authorization for consolidated city-county government. The separate corporate existence and government of any county and of each and every city and town therein may be abandoned and terminated and such county and each and all of the cities and towns therein may be consolidated and merged into one municipal corporation and government under this part and part 13 by proceeding as hereinafter provided.

History: En. Sec. 1, Ch. 121, L. 1923; re-en. Sec. 5520.1, R.C.M. 1935; R.C.M. 1947, 11-3401.

7-3-1202. Nature of consolidated government. As a political subdivision of the state, such consolidated municipality shall have the status of a county, and for the purpose of representation in the legislature, as provided by the constitution and laws of this state, and for all other purposes, it shall replace and be the successor of the county and shall be attached to the same judicial district.

History: En. Sec. 118, Ch. 121, L. 1923; re-en. Sec. 5520.119, R.C.M. 1935; R.C.M. 1947, 11-3559(part).

7-3-1203. General powers of consolidated government. (1) The inhabitants of every consolidated municipality organized under the provisions of this part and part 13, as its limits are at the time of such organization or as they may be thereafter established as provided by law, shall be a body politic and corporate under the designation and name as adopted at the election providing for such consolidation and merging and as such shall have perpetual succession; may use a corporate seal; may sue and be sued; may contract and be contracted with; may acquire property within or without the boundaries of the municipality for any municipal purpose, in fee simple or lesser interest or estate, by purchase, gift, devise, appropriation, lease, or lease with privilege of purchase and may sell, lease, hold, manage, and control such property as the interest of the municipality may require; may levy and collect such taxes as are authorized by this part or part 13 or by the general laws of the state; and except as otherwise provided in this part and part 13, such municipality shall have and may exercise all other powers that are now or hereafter may be conferred on counties, cities, and towns by the laws of this state.

(2) All powers of the municipality, whether expressed or implied, shall be exercised and enforced in the manner prescribed in this part and part 13 or in the general laws of the state or, when not so prescribed, then as may be prescribed by ordinance or resolution of the commission.

History: En. Sec. 6, Ch. 121, L. 1923; re-en. Sec. 5520.6, R.C.M. 1935; R.C.M. 1947, 11-3406.

Cross-References

General powers — local government units, Art. XI, sec. 4, Mont. Const.

7-3-1204. Petition for city-county consolidated government — election required. (1) The question of the abandonment and termination of the separate corporate existence and government of a county and of each city and town therein and the consolidation and merging of the existence and government of the county and each of the cities and towns therein into one municipal corporation and government under the provisions of this part and part 13 shall be submitted to the registered electors of the county if a petition is filed in the office of the election administrator of the county, signed by at least 20% of the electors of the county whose names appear on the official register of voters of the county on the date of the filing of the petition, requesting that such question be submitted to the registered electors of the county.

(2) The petition shall be substantially in the form and shall be signed, verified, and filed in the manner prescribed in 7-5-132 through 7-5-137 for initiative and referendum petitions and shall designate therein the name by which the consolidated government is to be known, which must be either that of the county or of some one of the cities or towns therein.

History: (1)En. Sec. 2, Ch. 121, L. 1923; re-en. Sec. 5520.2, R.C.M. 1935; Sec. 11-3402, R.C.M. 1947; (2)En. Sec. 3, Ch. 121, L. 1923; re-en. Sec. 5520.3, R.C.M. 1935; Sec. 11-3403, R.C.M. 1947; R.C.M. 1947, 11-3402, 11-3403(part); amd. Sec. 3, Ch. 262, L. 1979; amd. Sec. 381, Ch. 571, L. 1979.

Cross-References

List of registered voters, 13-2-115, 13-2-122.

7-3-1205. Certification of petition — board action. (1) If the county election administrator finds that the petition or amended petition is signed by the required number of registered electors, the election administrator shall certify the finding to the board of county commissioners at their next regular meeting.

(2) The board shall, within 10 days after receiving the election administrator's certificate, order a special election to be held on the question. The order must specify that the election will be held in conjunction with the next regular or primary election. The board of county commissioners shall issue a proclamation setting forth the purpose for which the special election is held and the date of holding the election. The proclamation must be published in the manner prescribed by 13-1-108.

History: En. Sec. 3, Ch. 121, L. 1923; re-en. Sec. 5520.3, R.C.M. 1935; R.C.M. 1947, 11-3403(part); amd. Sec. 382, Ch. 571, L. 1979; amd. Sec. 13, Ch. 387, L. 1995.

Compiler's Comments

1995 Amendment: Chapter 387 in (2), at end of first sentence, deleted "shall be submitted to the registered electors of the county", at end of second sentence substituted "in conjunction with the next regular or primary election" for "which shall be not less than 90 or more than 120 days from and after the day when such order is made, and", and in third sentence, after "shall", deleted "immediately upon making such order"; and made minor changes in style.

7-3-1206. Form of ballot. At such election the ballots to be used shall be printed on plain white paper, shall conform as nearly as possible to the ballots used in general elections, and shall have printed thereon the following:

Shall the corporate existence and government of the county of .... and of each and every city and town therein be consolidated and merged into one municipal corporation and government under the provisions of chapter 121, acts of the eighteenth legislative assembly of the state of Montana, to be known and designated as "city and county of ...."?

☐ YES.

☐ NO.

History: En. Sec. 4, Ch. 121, L. 1923; re-en. Sec. 5520.4, R.C.M. 1935; R.C.M. 1947, 11-3404(part).

Cross-References

Ballots — generally, Title 13, ch. 12.

7-3-1207. Conduct of election. Such election shall be conducted, vote returned and canvassed, and result declared in the same manner as provided by law in respect to general elections.

History: En. Sec. 4, Ch. 121, L. 1923; re-en. Sec. 5520.4, R.C.M. 1935; R.C.M. 1947, 11-3404(part).

Cross-References

General elections law, Title 13.

7-3-1208. Election of commission upon favorable vote. (1) If the majority of the votes cast at the election are in favor of the consolidation and merging, the board of county commissioners of the county shall, within 2 weeks after the election returns have been canvassed, order a special election to be held in conjunction with the next regular or primary election for the purpose of electing the number of members of the commission to which the consolidated municipality is entitled. This order must specify the time when the election will be held. The board of county commissioners, immediately upon making the order, shall issue a proclamation setting forth the purpose for which the special election is held and the date of holding the the election. The proclamation must be published in the manner prescribed by 13-1-108.

(2) A primary election may not be held for the purpose of nominating candidates for members of the commission to be voted for at the special election. The candidates must be nominated directly by a petition that is in substantially the same form and signed by the same number of signers as required for primary nominating petitions. The election must be conducted, the vote must be returned and canvassed, and the result must be declared in the same manner as provided by law in respect to general elections.

History: En. Sec. 5, Ch. 121, L. 1923; re-en. Sec. 5520.5, R.C.M. 1935; R.C.M. 1947, 11-3405; amd. Sec. 383, Ch. 571, L. 1979; amd. Sec. 14, Ch. 387, L. 1995.

Compiler's Comments

1995 Amendment: Chapter 387 in (1), in first sentence near middle after "held", inserted "in conjunction with the next regular or primary election" and in second sentence, after "held", deleted "which shall be not less than 90 or more than 120 days after the day when such order is made; provided, however, that if any general election is to be held in such county after 3 months but within 6 months from the date of the making of such order, then such order shall require such special election to be held at the same time as such general election"; and made minor changes in style.

Cross-References

Date of general election, 13-1-104.

Primary nominating petitions, Title 13, ch. 10, part 5.

Canvass of returns, Title 13, ch. 15.

7-3-1209. Resolution declaring creation of consolidated government. (1) At the first meeting of the commission whose members are first elected under the provisions of this part, the commission shall adopt a resolution reciting the filing of the petition provided for in 7-3-1204, the ordering and holding of a special election as requested in the petition, the result of the election and the holding of the special election for and the election of the members of the first commission, and the name and designation of the consolidated municipality. This resolution must be in duplicate and signed by all of the members of the commission and also entered at length on the journal of the commission. One copy of the resolution must be filed in the office of the clerk of the commission, and the other copy must be transmitted to and filed in the office of the secretary of state.

(2) Immediately upon the adoption of the resolution by the commission, the separate corporate existence of the county and of each city and town therein is considered to be consolidated and merged into one municipal corporation under the name selected, designated, and adopted as provided in this part, and the consolidated municipality is considered to have succeeded to and to possess and own all of the property and assets of every kind and description and shall, except as otherwise provided, become responsible for all of the obligations and liabilities of the county, cities, and towns consolidated and merged.

History: En. Sec. 118, Ch. 121, L. 1923; re-en. Sec. 5520.119, R.C.M. 1935; R.C.M. 1947, 11-3559(part); amd. Sec. 4, Ch. 262, L. 1979.

7-3-1210. Existing contracts continued. All contracts entered into by the county or by any city or town therein or on behalf of any improvement district by such county or by any such city or town prior to the election and qualification of a commission under this part and part 13 shall continue in full force and effect subsequent thereto. Public improvements for which initial steps may have been taken under laws effective in the county prior to the election and qualification of a commission under this part and part 13 may thereafter be carried to completion in accordance with the provisions of such laws.

History: En. Sec. 115, Ch. 121, L. 1923; re-en. Sec. 5520.116, R.C.M. 1935; R.C.M. 1947, 11-3556.

Cross-References

Sanctity of contracts, Art. II, sec. 31, Mont. Const.

7-3-1211. Treatment of existing ordinances. The commission first elected may, at its first meeting, make an order that all existing ordinances and resolutions of some one city or town within the consolidated municipality which are of general application in such city or town shall be continued in force and be extended throughout the consolidated municipality, and a copy of such order must be published at least once in each newspaper printed and published within the consolidated municipality within 10 days after the making of such order. All other ordinances and resolutions of such city or town and all ordinances of all other cities and towns within the consolidated municipality, save and except ordinances and resolutions relating to public improvements to be paid for in whole or in part by special assessments, shall, upon the making of such order, be deemed repealed.

History: En. Sec. 116, Ch. 121, L. 1923; re-en. Sec. 5520.117, R.C.M. 1935; R.C.M. 1947, 11-3557.

Cross-References

Action of resolutions and ordinances — alternative forms, 7-3-106, 7-3-1105.

7-3-1212. Treatment of existing officers. The members of the board of county commissioners of the county and members of the council of every city and town therein holding office on the date when any election is held at which the question of the consolidation and merging of the county and city and town governments is approved and adopted by the qualified electors of the county shall continue in office and in the performance of their duties until the first commission shall have been elected and have qualified, whereupon such board of county commissioners and city and town councils shall be deemed abolished. All other persons holding offices or positions, whether elective or appointive, under the government of such county or under the government of any city or town therein at the date of such election shall continue in the performance of the duties of their respective offices and positions until provision shall be made by the commission for the performance or discontinuance of such duties or the discontinuance of such offices or positions.

History: En. Sec. 117, Ch. 121, L. 1923; re-en. Sec. 5520.118, R.C.M. 1935; R.C.M. 1947, 11-3558.

Cross-References

Alternative forms — transitions of personnel, officials, and governing body, 7-3-158, 7-3-160, 7-3-161.

7-3-1213. Power to effectuate transition. The commission shall have power to make all necessary regulations not inconsistent with this part or part 13 for the transition from the several governments of and within the county to the government provided by this part and part 13, including the transfer to the treasury of the consolidated city and county of all funds and money of such several governments.

History: En. Sec. 119, Ch. 121, L. 1923; re-en. Sec. 5520.120, R.C.M. 1935; R.C.M. 1947, 11-3560.

7-3-1214. Consolidated municipality commission. (1) Except as otherwise provided in this part or part 13, all powers of the consolidated municipality are vested in a commission. For the purpose of determining the number of members composing the commission, consolidated municipalities organized under the provisions of this part and part 13 shall be classified and all of the provisions of 7-1-2111 and 7-1-2112 govern and control the classification of the consolidated municipalities.

(2) (a) In consolidated municipalities of the first class, the commission shall consist of seven members.

(b) In consolidated municipalities of the second class, third class, or fourth class, the commission shall consist of five members.

(c) In consolidated municipalities of the fifth class, sixth class, or seventh class, the commission shall consist of three members.

History: En. Sec. 7, Ch. 121, L. 1923; re-en. Sec. 5520.7, R.C.M. 1935; R.C.M. 1947, 11-3407(part); amd. Sec. 5, Ch. 262, L. 1979.

7-3-1215. Qualifications for commission. (1) Members of the commission must be qualified electors of the consolidated municipality and may not hold any other public office except that of notary public or member of the state militia.

(2) A member of the commission ceasing to possess any of the qualifications specified in this section shall immediately forfeit his office.

History: **En. Sec. 7, Ch. 121, L. 1923; re-en. Sec. 5520.7, R.C.M. 1935; R.C.M. 1947, 11-3407(part); amd. Sec. 6, Ch. 262, L. 1979.**

Cross-References

Qualified electors, Art. IV, sec. 2, Mont. Const.; 13-1-111.

7-3-1216. Term of office of commission members. (1) Except as provided in subsection (2), the term of office of members of the commission shall be 4 years and shall commence on the first Monday of January following their election.

(2) The terms of office of the members first elected at such special election shall commence on the first day of the third month following their election, and the terms of office of a majority of such members first elected, to be determined by lot, shall expire when their successors are elected and qualified in the first year following their election, and the terms of the remaining members first elected shall expire when their successors are elected and qualified in the third year following their election.

History: **En. Sec. 7, Ch. 121, L. 1923; re-en. Sec. 5520.7, R.C.M. 1935; R.C.M. 1947, 11-3407(part); amd. Sec. 2, Ch. 220, L. 1985.**

7-3-1217. Vacancies. (1) If a vacancy occurs in the commission, except as the result of a recall election, some eligible person shall be chosen by a majority vote of the remaining members to fill the place for the unexpired term.

(2) Absence from all regular meetings for a period of 90 days shall operate to vacate the seat of a member unless such absence be authorized by the commission.

History: **(1)En. Sec. 7, Ch. 121, L. 1923; re-en. Sec. 5520.7, R.C.M. 1935; Sec. 11-3407, R.C.M. 1947; (2)En. Sec. 13, Ch. 121, L. 1923; re-en. Sec. 5520.13, R.C.M. 1935; amd. Sec. 1, Ch. 79, L. 1967; Sec. 11-3413, R.C.M. 1947; R.C.M. 1947, 11-3407(part), 11-3413(part).**

Cross-References

Vacancy in county offices — what constitutes, 7-4-2206.

Vacancy in municipal offices — what constitutes, 7-4-4111.

7-3-1218. Meetings of commission. (1) (a) Except as provided in subsection (1)(b), at 2 p.m. on the first Monday of January following a regular municipal election, the commission shall meet at the courthouse in the consolidated municipality and the newly elected members shall assume the duties of office.

(b) The first meeting of the commission after the special election at which the first members of the commission are elected shall be held at 2 p.m. on the first day of the third month following the special election, and at this meeting the members of the commission shall determine by lot the members whose terms will expire on the first Monday of January in the first year following such special election and the members whose terms will expire on the first Monday of January in the third year following such election.

(2) Thereafter the commission shall meet at such times as may be prescribed by ordinance or resolution, but not less frequently than once in each month. Special meetings shall be called by the clerk of the commission upon

written request of the president, the manager, or a majority of the members of the commission. A notice of a meeting shall state the subject to be considered at the meeting, and no other subject shall be considered at the meeting.

(3) All meetings of the commission and of committees thereof shall be open to the public, and the rules of the commission shall provide that citizens of the municipality shall have a reasonable opportunity to be heard at any meeting in regard to any matter considered thereat.

History: En. Sec. 8, Ch. 121, L. 1923; re-en. Sec. 5520.8, R.C.M. 1935; R.C.M. 1947, 11-3408; amd. Sec. 7, Ch. 262, L. 1979; amd. Sec. 384, Ch. 571, L. 1979.

7-3-1219. Organization and officers of commission. (1) At the first meeting of the commission following the special election at which the members thereof are first elected and thereafter at its meeting on the first Monday of January following each general election at which members of the commission are elected, the commission shall choose one of its members as president and another as vice-president.

(2) The president shall preside at meetings of the commission and shall exercise the powers and perform the duties conferred and imposed by this part or part 13 and the ordinances of the municipality. He shall be recognized as the official head of the municipality for all ceremonial purposes, by the courts for serving civil processes, and by the governor for purposes of military law. In time of public danger or emergency he shall, if authorized by vote of the commission, take command of the police, maintain order, and enforce the law. If a vacancy occurs in the office of president or in case of his absence or disability, the vice-president shall act as president for the unexpired term or during the continuance of the absence or disability.

(3) The director of finance shall be ex officio clerk of the commission and shall, either in person or by deputy, keep the records of the commission and perform such other duties as may be required by this part or part 13 or by the commission.

History: (1), (2)En. Sec. 10, Ch. 121, L. 1923; re-en. Sec. 5520.10, R.C.M. 1935; Sec. 11-3410, R.C.M. 1947; (3)En. Sec. 11, Ch. 121, L. 1923; re-en. Sec. 5520.11, R.C.M. 1935; Sec. 11-3411, R.C.M. 1947; R.C.M. 1947, 11-3410, 11-3411; amd. Sec. 3, Ch. 220, L. 1985.

Cross-References

Manager — chief executive of government, 7-3-1242.

7-3-1220. Conduct of commission business. (1) The commission shall determine its own rules and order of business and shall keep a journal of its proceedings. It shall have power to compel the attendance of absent members, may punish its members for disorderly behavior, and, by vote of not less than two-thirds of its members, may expel a member for disorderly conduct or the repeated violation of its rules; but no member shall be expelled unless notified of the charge against him and given an opportunity to be heard.

(2) A majority of the members elected to the commission shall constitute a quorum to do business, but a less number may adjourn from time to time and compel the attendance of absent members in such manner and under such penalties as may be prescribed by ordinance. The affirmative vote of a majority of the members elected to the commission shall be necessary to adopt any ordinance, resolution, order, or vote; except that a vote to adjourn or regarding

the attendance of absent members may be adopted by a majority of the members present.

History: **(1)En. Sec. 9, Ch. 121, L. 1923; re-en. Sec. 5520.9, R.C.M. 1935; Sec. 11-3409, R.C.M. 1947; (2)En. Sec. 12, Ch. 121, L. 1923; re-en. Sec. 5520.12, R.C.M. 1935; Sec. 11-3412, R.C.M. 1947; R.C.M. 1947, 11-3409, 11-3412.**

7-3-1221. Compensation of commission members. (1) The commission may by ordinance provide compensation for its members, but the total amount and manner of compensation may not exceed the maximum sum prescribed by law for aldermen of cities of the first class.

(2) In addition to any compensation authorized by this section, each member of the commission shall receive the same sum prescribed by law for county commissioners per mile for any distance in excess of 10 miles necessarily traveled in going from and returning to his residence because of attendance upon a regular or regularly called meeting of the commission or in travel in the county undertaken in performance of official duties.

History: **En. Sec. 13, Ch. 121, L. 1923; re-en. Sec. 5520.13, R.C.M. 1935; amd. Sec. 1, Ch. 79, L. 1967; R.C.M. 1947, 11-3413(part).**

Cross-References

Mileage allowance, Title 2, ch. 18, part 5.

Compensation of municipal officers, 7-4-4201.

7-3-1222. Procedure to enact ordinances and resolutions. (1) Ordinances and resolutions shall be introduced in the commission only in written or printed form. All ordinances or resolutions, except ordinances making appropriations, shall be confined to one subject, which shall be clearly expressed in the title, except as provided in 7-3-1226. Ordinances making appropriations shall be confined to the subject of appropriations. No ordinance shall be passed until it has been read on 3 separate days, unless the requirement of reading on 3 separate days has been dispensed with by a vote of not less than two-thirds of the members of the commission. The final reading shall be in full unless a written or printed copy of the measure shall have been furnished to each member of the commission prior to such reading.

(2) The enacting clause of all ordinances passed by the commission shall be: “Be it ordained by the city and county of ....”, and the enacting clause of all ordinances submitted by the initiative shall be: “Be it ordained by the people of the city and county of .....”.

(3) No ordinance, resolution, or section thereof shall be revised or amended unless the new ordinance or resolution contains the entire ordinance, resolution, or section thereof as revised or amended.

(4) Every ordinance, or resolution upon its final passage, shall be recorded in a book kept for that purpose and shall be authenticated by the signatures of the president and clerk. Within 10 days after its final passage, each ordinance or resolution shall be published at least once in such manner as the commission may provide by ordinance.

(5) Initiated ordinances adopted by the electors shall be published and may be amended or repealed by the commission, as in the case of other ordinances.

History: **(1), (2)En. Sec. 14, Ch. 121, L. 1923; re-en. Sec. 5520.14, R.C.M. 1935; Sec. 11-3414, R.C.M. 1947; (3)En. Sec. 16, Ch. 121, L. 1923; re-en. Sec. 5520.16, R.C.M. 1935; Sec. 11-3416, R.C.M. 1947; (4)En. Sec. 18, Ch. 121, L. 1923; re-en. Sec. 5520.18, R.C.M. 1935; Sec. 11-3418, R.C.M. 1947; (5)En. Sec. 24, Ch. 121, L. 1923; re-en. Sec. 5520.24,**

R.C.M. 1935; Sec. 11-3424, R.C.M. 1947; R.C.M. 1947, 11-3414, 11-3416, 11-3418, 11-3424(part).

Cross-References

Local government ordinances, resolutions, and initiatives and referendums, Title 7, ch. 5, part 1.

7-3-1223. Effective date of ordinances. (1) Ordinances making the annual tax levy, ordinances and resolutions providing for local improvements and assessments, and emergency measures shall take effect at the time indicated therein. All other ordinances and resolutions enacted by the commission shall be in effect from and after 30 days from the date of their passage.

(2) When an ordinance proposed by initiative petition is passed by the commission in a changed or amended form and the committee of the petitioners requires that such proposed ordinance be submitted to a vote of the electors, as provided in 7-3-1229, the ordinance as passed by the commission shall not take effect until after such vote, and if the proposed ordinance so submitted be approved by a majority of the electors voting thereon, the ordinance as passed by the commission shall be deemed repealed.

(3) Ordinances adopted by the electors shall take effect at the time fixed therein or, if no time is specified, 30 days after the adoption thereof.

History: (1), (3)En. Sec. 17, Ch. 121, L. 1923; re-en. Sec. 5520.17, R.C.M. 1935; Sec. 11-3417, R.C.M. 1947; (2)En. Sec. 23, Ch. 121, L. 1923; re-en. Sec. 5520.23, R.C.M. 1935; Sec. 11-3423, R.C.M. 1947; R.C.M. 1947, 11-3417(part), 11-3423.

7-3-1224. Emergency measures. An emergency measure is an ordinance or resolution to provide for the immediate preservation of the public peace, health, or safety, in which the emergency claimed is set forth and defined in a preamble thereto. The affirmative vote of at least two-thirds of the members of the commission shall be required to pass an emergency ordinance or resolution.

History: En. Sec. 17, Ch. 121, L. 1923; re-en. Sec. 5520.17, R.C.M. 1935; R.C.M. 1947, 11-3417(part).

7-3-1225. Vote required on certain measures. No measure making or amending a grant, renewal, or extension of a franchise or other special privilege may be passed without first submitting the application therefor to the qualified electors in the manner provided by 7-5-4321 and 7-5-4322.

History: En. Sec. 17, Ch. 121, L. 1923; re-en. Sec. 5520.17, R.C.M. 1935; R.C.M. 1947, 11-3417(part); amd. Sec. 8, Ch. 262, L. 1979.

7-3-1226. Codification of ordinances. (1) Ordinances may be revised, codified, rearranged, and published in book form under appropriate titles, chapters, and sections, and such revision and codification may be made in one ordinance containing one or more subjects. The publication of such revision and codification in book form as aforesaid shall be held to be a sufficient publication of the ordinance or several ordinances contained in such revision and codification.

(2) Any such publication of a revision or codification of ordinances in book form shall contain a certificate of the president and clerk of the correctness of such revision, codification, and publication; and such book so published shall be received in evidence in any court for the purpose of proving the ordinance

or ordinances therein contained, the same and for the same purpose as the original book, ordinances, minutes, or journals would be received.

History: **En. Sec. 15, Ch. 121, L. 1923; re-en. Sec. 5520.15, R.C.M. 1935; R.C.M. 1947, 11-3415.**

Cross-References

Register of ordinances and codification, 7-5-107.

7-3-1227. Petition for initiative. (1) Any proposed ordinance, except an ordinance making a tax levy or appropriation, may be submitted to the commission by petition signed by 10% of the qualified electors of the municipality whose names appear on the register of voters on the date when the proposed ordinance is submitted to the commission.

(2) All petition papers circulated with respect to any proposed ordinance shall be uniform in character and shall contain the proposed ordinance in full.

(3) Proposed ordinances for repealing any existing ordinance or ordinances, in whole or in part, may be submitted to the commission as provided in 7-3-1227 through 7-3-1229 for initiating ordinances.

History: **En. Secs. 19, 24, Ch. 121, L. 1923; re-en. Secs. 5520.19, 5520.24, R.C.M. 1935; R.C.M. 1947, 11-3419, 11-3424(part).**

Cross-References

Right of initiative, Art. XI, sec. 8, Mont. Const.

General initiative petition requirements, 7-5-132.

7-3-1228. Action on initiative petition. (1) If an initiative petition or amended petition be found sufficient by the clerk, he shall so certify and shall submit the ordinance therein set forth to the commission at its next meeting, and the commission shall at once read and refer it to an appropriate committee, which may be a committee of the whole.

(2) Provision shall be made for public hearings upon the proposed ordinance before the committee to which it is referred. Thereafter, the committee shall report the ordinance to the commission, with its recommendations thereon, not later than 60 days after the date on which such ordinance was submitted to the commission by the clerk.

(3) Upon receiving the ordinance from the committee, the commission shall proceed at once to consider it and shall take final action thereon within 30 days from the date of such committee report.

History: **En. Sec. 20, Ch. 121, L. 1923; re-en. Sec. 5520.20, R.C.M. 1935; R.C.M. 1947, 11-3420.**

Cross-References

Action on petition by governing body — election moot, 7-5-133.

7-3-1229. Submission of initiative measure to electors. (1) If the commission fails to pass an ordinance proposed by initiative petition or passes it in a form different from that set forth in the petition, the committee of the petitioners may require that it be submitted to a vote of the electors either in its original form or with any change or amendment presented in writing, either at a public hearing before the committee to which the proposed ordinance was referred or during consideration by the commission. If the committee of petitioners requires the submission of a proposed ordinance to a vote of the electors, the committee shall certify that fact to the clerk and file in the clerk's office a certified copy of the ordinance, in the form in which it is to be submitted, within 10 days after final action on the ordinance by the commission.

(2) Upon receipt of the certified copy of a proposed ordinance from the committee of the petitioners, the clerk shall certify the fact to the commission at its next regular meeting. The proposed ordinance must be submitted to a vote of the electors at the next regular or primary election. If a majority of those voting on a proposed ordinance vote in favor of the proposed ordinance, it is an ordinance of the municipality.

History: (1)En. Sec. 21, Ch. 121, L. 1923; re-en. Sec. 5520.21, R.C.M. 1935; Sec. 11-3421, R.C.M. 1947; (2)En. Sec. 22, Ch. 121, L. 1923; re-en. Sec. 5520.22, R.C.M. 1935; Sec. 11-3422, R.C.M. 1947; R.C.M. 1947, 11-3421, 11-3422; amd. Sec. 15, Ch. 387, L. 1995.

Compiler's Comments

1995 Amendment: Chapter 387 in (2), at beginning of second sentence, deleted "If a municipal election is to be held within 6 months but more than 90 days after the receipt of the clerk's certificate by the commission", deleted former third and fourth sentences that read: "If no such election is to be held within the time aforesaid, the commission may provide for submitting the proposed ordinance to the electors at a special election to be held not sooner than 90 days after receipt of the clerk's certificate. If no municipal election be held within 6 months as aforesaid and the commission does not provide for a special election, the proposed ordinance shall be submitted to the electors at the first election held after the expiration of such 6 months", and at beginning of third sentence, after "If", deleted "when submitted to the electors"; and made minor changes in style.

7-3-1230. Petition for referendum. (1) The electors shall have power to approve or reject at the polls any ordinance passed by the commission except an ordinance making a tax levy or an emergency measure, such power being known as the referendum. Ordinances submitted to the commission and passed by the commission without change or passed in an amended form and not required by the committee of the petitioners to be submitted to a vote of the electors shall be subject to the referendum in the same manner as other ordinances.

(2) If, within 30 days after the final passage of an ordinance, a petition signed by 10% of the qualified electors whose names appear on the register of voters on the date when such petition is filed shall be filed with the clerk requesting that the ordinance or any specified part thereof be either repealed or submitted to a vote of the electors, it shall not become operative until the steps indicated herein have been taken. Referendum petitions shall contain the text of the ordinance or part thereof, the repeal of which is sought.

History: En. Sec. 25, Ch. 121, L. 1923; re-en. Sec. 5520.25, R.C.M. 1935; R.C.M. 1947, 11-3425.

Cross-References

Right of referendum, Art. XI, sec. 8, Mont. Const.

Initiative and referendum — generally, 7-5-132.

7-3-1231. Action on referendum petition. (1) If a referendum petition or amended petition is found sufficient, the clerk shall certify that fact to the commission at its next regular meeting and the ordinance or part of the ordinance set forth in the petition may not go into effect, or further action under the ordinance is suspended if it has gone into effect, until approved by the electors.

(2) Upon receipt of the clerk's certificate, the commission shall reconsider the ordinance or part of the ordinance, and its final vote upon reconsideration must be upon the question "Shall the ordinance (or part of the ordinance) set

forth in the referendum petition be repealed?" If upon reconsideration the ordinance or part of the ordinance is not repealed, it must be submitted to the electors at the next regular or primary election. If when submitted to the electors any ordinance or part of an ordinance is not approved by a majority of those voting on the issue, it is repealed.

History: En. Sec. 26, Ch. 121, L. 1923; re-en. Sec. 5520.26, R.C.M. 1935; R.C.M. 1947, 11-3426; amd. Sec. 16, Ch. 387, L. 1995.

Compiler's Comments

1995 Amendment: Chapter 387 in (2), in second sentence before "election", substituted "regular or primary" for "municipal" and after "election" deleted "held not less than 90 days after such final vote by the commission" and deleted former third sentence that read: "The commission, by vote of not less than two-thirds of its members, may submit the ordinance or part thereof to the electors at a special election to be held not sooner than the time aforesaid"; and made minor changes in style.

Cross-References

Action on petition by governing body — election moot, 7-5-133.

7-3-1232. Preliminary acts authorized prior to submission of certain ordinances to electors. In case a petition is filed requiring that an ordinance passed by the commission providing for the expenditure of money, a bond issue, or a public improvement be submitted to a vote of the electors, all steps preliminary to such actual expenditure, actual issuance of bonds, or actual execution of the contract for such improvement may be taken prior to the election.

History: En. Sec. 28, Ch. 121, L. 1923; re-en. Sec. 5520.28, R.C.M. 1935; R.C.M. 1947, 11-3428.

7-3-1233. Repealed. Sec. 407, Ch. 571, L. 1979.

History: En. Secs. 29, 30, 31, Ch. 121, L. 1923; re-en. Secs. 5520.29, 5520.30, 5520.31, R.C.M. 1935; R.C.M. 1947, 11-3429, 11-3430, 11-3431; amd. Sec. 9, Ch. 262, L. 1979.

7-3-1234. Repealed. Sec. 407, Ch. 571, L. 1979.

History: En. Sec. 27, Ch. 121, L. 1923; re-en. Sec. 5520.27, R.C.M. 1935; R.C.M. 1947, 11-3427.

7-3-1235 through 7-3-1240 reserved.

7-3-1241. Appointment and removal of manager of consolidated municipality. (1) The commission shall appoint a manager. He shall be chosen by the commission solely on the basis of his executive and administrative qualifications and need not, when appointed, be a resident of the municipality. No member of the commission shall, during the time for which elected, be chosen manager. In case of the absence or disability of the manager, the commission may designate some responsible person to perform the duties of the office. The manager shall receive such compensation as may be fixed by the commission.

(2) The manager shall not be appointed for a definite term but shall be removable at the pleasure of the commission. In case the commission determines to remove the manager, he shall, if he so demands, be given a written statement of the reason alleged for the proposed removal and the right to be heard thereon at a public meeting of the commission prior to the date on which his final removal shall take effect, but pending and during such hearing the commission may suspend him from office. The action of the commission in suspending or removing the manager shall be final, it being the intention of this section to vest all authority and fix all responsibility for any such suspension or removal in the commission.

History: **En. Sec. 32, Ch. 121, L. 1923; re-en. Sec. 5520.32, R.C.M. 1935; R.C.M. 1947, 11-3432(part).**

7-3-1242. Role of manager. (1) The manager shall be the chief executive officer of the municipality.

(2) The manager shall be responsible to the commission for the proper administration of the affairs of the municipality placed in his charge and to that end shall appoint all officers and employees in the administrative service of the municipality, except as otherwise provided in this part or part 13 and except as he may authorize the head of a department or office responsible to him to appoint subordinates in such department or office.

History: **En. Secs. 32, 33, Ch. 121, L. 1923; re-en. Secs. 5520.32, 5520.33, R.C.M. 1935; R.C.M. 1947, 11-3432(part), 11-3433(part).**

Cross-References

President of commission — official head of government, 7-3-1219.

7-3-1243. Appointments by manager. Appointments by or under the authority of the manager shall be confined to citizens of the municipality, except in such specific cases as the commission may suspend this requirement, and shall be on the basis of the ability, training, and experience of the appointees in the work which they are to perform. All such appointments shall be without definite term unless for temporary service not to exceed 60 days.

History: **En. Sec. 33, Ch. 121, L. 1923; re-en. Sec. 5520.33, R.C.M. 1935; R.C.M. 1947, 11-3433(part).**

7-3-1244. Removal of appointees. (1) Any officer or employee of the municipality appointed by the manager or upon his authorization may be laid off, suspended, or removed from office or employment either by the manager or the officer by whom appointed. Verbal or written notice of layoff, suspension, or removal given to an officer or employee or written notice left at or mailed to his usual place of residence shall be sufficient to put any such layoff, suspension, or removal into effect unless the person so notified shall, within 5 days of such notice, demand a written statement of reasons therefor and the right to be heard thereon before the manager. Upon such demand the officer making the layoff, suspension, or removal shall supply the person notified thereof with a written statement of the reasons therefor, and the manager shall fix a time and place for the public hearing. Following the public hearing the manager shall either confirm the layoff, suspension, or removal as specified in the notice, reinstate the person so notified in the service, or make such other disposition of the matter as in his opinion the good of the service may require.

(2) The decision of the manager in any such case shall be final, and there shall be no appeal therefrom to any officer, body, or court whatsoever. A copy of the written statement of reasons given for any layoff, suspension, or removal and a copy of any written reply thereto by the officer or employee involved, together with a copy of the decision of the manager, shall be filed as a public record in the office of the clerk.

History: **En. Sec. 34, Ch. 121, L. 1923; re-en. Sec. 5520.34, R.C.M. 1935; R.C.M. 1947, 11-3434.**

Cross-References

Right of access to courts, Art. II, sec. 16, Mont. Const.

Collective bargaining — municipal employees, Title 39, ch. 31.

7-3-1245. Relationship of commission and manager regarding appointments and administrative service. (1) Neither the commission nor any of its committees or members shall direct or request the appointment of any person to or his removal from office or employment by the manager or any of his subordinates or in any manner take part in the appointment or removal of officers and employees in the administrative service of the municipality. Except for the purpose of inquiry, the commission and its members shall deal with that portion of the administrative service for which the manager is responsible solely through the manager, and neither the commission nor any member thereof shall give orders to any subordinate of the manager either publicly or privately.

(2) Any violation of the provisions of this section by a member of the commission shall be a misdemeanor, conviction of which shall immediately forfeit the office of the member so convicted.

History: En. Sec. 35, Ch. 121, L. 1923; re-en. Sec. 5520.35, R.C.M. 1935; R.C.M. 1947, 11-3435.

Cross-References

Official misconduct — forfeiture of office, 45-7-401.

Misdemeanors — general penalty, 46-18-212.

7-3-1246. General duties of manager. It shall be the duty of the manager to act as chief conservator of the peace within the municipality, to supervise the administration of the affairs of the municipality, to see that the ordinances of the municipality and the laws of the state are enforced, to make such recommendations to the commission concerning the affairs of the municipality as may seem to him desirable, to keep the commission advised of the financial conditions and future needs of the municipality, to prepare and submit to the commission such reports as may be required by that body, and to perform such other duties as may be prescribed by this part or part 13 or be required of him by ordinance or resolution of the commission.

History: En. Sec. 36, Ch. 121, L. 1923; re-en. Sec. 5520.36, R.C.M. 1935; R.C.M. 1947, 11-3436.

7-3-1247. Attendance and participation of manager, directors, and other officers at commission meetings. The manager, the directors of all departments, and all other officers of the municipality shall be entitled to be present at all sessions of the commission. The manager shall have the right to take part in the discussion of all matters coming before the commission, and the directors and other officers shall be entitled to take part in all discussions of the commission relating to their respective departments and offices.

History: En. Sec. 37, Ch. 121, L. 1923; re-en. Sec. 5520.37, R.C.M. 1935; R.C.M. 1947, 11-3437.

7-3-1248. Departments of consolidated municipality. (1) (a) In consolidated municipalities of the first, second, third, or fourth class, there shall be a department of finance, a police department, a department of public works, a department of health, a fire department, and such other departments and offices as may be established by ordinance.

(b) In consolidated municipalities of the fifth, sixth, or seventh class, there shall be a department of finance, a police department, a department of public works, a department of health, and such other departments and offices as may be established by ordinance.

(2) The commission may change or abolish any department or office established by ordinance and may prescribe, combine, distribute, or discontinue the functions and duties thereof. Additional functions and duties may be by ordinance assigned to departments and offices created by this part or part 13, but no function or duty assigned by this part or part 13 to any such department or office shall be discontinued or assigned to any other department or office. If the manager so recommends and the commission so authorizes, the manager may appoint one person to act as the head of two or more departments or offices, but the department of law may not thus be joined with any other department, nor may the manager be authorized to act as head of the department of finance or of any office therein other than of purchasing agent or assessor.

History: En. Sec. 38, Ch. 121, L. 1923; re-en. Sec. 5520.38, R.C.M. 1935; R.C.M. 1947, 11-3438; amd. Sec. 10, Ch. 262, L. 1979.

Cross-References

Classification of municipalities, 7-1-4111.

7-3-1249. Employees and employment list. (1) The number of assistants and other subordinates to be employed in or by each administrative department or office shall be fixed by the commission, but the commission may authorize the manager to determine the number of such assistants and subordinates in and for a specified department or office, subject to the appropriations made thereto.

(2) The director of finance shall maintain in his office a list of all persons in the administrative service of the municipality, showing in connection with each name the position held, the date of appointment, the character of employment, and the rate of compensation. Each appointing officer shall promptly transmit to the director of finance such information regarding his department or office as may be necessary to keep this list accurate in all respects at all times. The treasurer shall not pay nor shall the director of finance issue any warrant for the payment of any salary or compensation to any person whose name does not appear upon such list, nor shall payment be made at a rate other than that specified on such list. Any sum paid contrary to the foregoing provisions of this section may be recovered from any officer paying or authorizing the payment thereof or from the surety on his official bond. If through the failure of any officer to give information to the director of finance as required in this section or through omission or error in such information, payment is made to any person whose name should not be on such list or payment is made in excess of the amount which any person whose name is rightfully on the list should receive, then the amount of any such payment or excess payment may be recovered from the officer by reason of whose failure, omission, or error the payment or excess payment was made or from the surety on his official bond.

History: En. Secs. 39, 40, Ch. 121, L. 1923; re-en. Secs. 5520.39, 5520.40, R.C.M. 1935; R.C.M. 1947, 11-3439, 11-3440.

7-3-1250. Compensation of officers and employees. The compensation of officers and employees in the administrative service of the municipality shall be fixed by ordinance, but all positions in such service, except those of heads of departments and heads of offices not included within regular departments, shall, for purposes of compensation, be graded and classified by the manager according to duties and responsibilities. The commission shall by ordinance establish a schedule of compensation for the positions so graded and classified, which shall prescribe uniform compensation for like service as determined by the grading and classification by the manager. Such schedule of compensation may establish a minimum and maximum for any grade, and an increase in compensation within the limits provided for any grade may be granted by the manager upon the basis of efficiency and seniority.

History: **En. Sec. 41, Ch. 121, L. 1923; re-en. Sec. 5520.41, R.C.M. 1935; R.C.M. 1947, 11-3441.**

7-3-1251. Advisory boards. The manager may appoint a board of citizens qualified to act in an advisory capacity to the head of any specified department or office. The members of all such boards shall serve without compensation, and it shall be their duty to consult with and advise the officer in charge of the department or office for which they are appointed, but not to direct the conduct of such department or office. Public meetings of such boards may be called for the consideration of the affairs of the department or office for which they are appointed.

History: **En. Sec. 42, Ch. 121, L. 1923; re-en. Sec. 5520.42, R.C.M. 1935; R.C.M. 1947, 11-3442.**

7-3-1252. Investigatory powers of commission and manager. (1) The commission, the manager, or any person or committee authorized by either of them shall have power to inquire into the conduct of any department or office of the municipality and to make investigations as to municipal affairs and for that purpose may subpoena witnesses, administer oaths, and compel the production of books, papers, and other evidence.

(2) It shall be the duty of the manager to designate a police officer to serve subpoenas. The commission shall provide by ordinance the penalty or penalties for contempt in refusing to obey any such subpoena or to produce such books, papers, and other evidence and shall have the power to punish any such contempt in the manner provided by ordinance.

History: **En. Sec. 43, Ch. 121, L. 1923; re-en. Sec. 5520.43, R.C.M. 1935; R.C.M. 1947, 11-3443.**

Cross-References

Subpoenas — generally, Title 26, ch. 2, part 1.

7-3-1253. Disposition of money received by officers in official capacity. No person elected or appointed to any office or position under the municipal government established by this part and part 13 shall be entitled to or receive for his own use any fees, emoluments, commissions, or perquisites other than the salary or compensation fixed by this part and part 13 or by the commission; and all such fees, emoluments, commissions, and perquisites ensuing out of the performance of official duty shall belong to the municipality and be paid into the treasury thereof at the times and in the manner provided by the general laws of the state.

History: **En. Sec. 107, Ch. 121, L. 1923; re-en. Sec. 5520.108, R.C.M. 1935; R.C.M. 1947, 11-3548.**

7-3-1254. Nonpartisan nature of government. (1) No person holding an appointive office or position in the municipal government shall directly or indirectly solicit or receive or be in any manner concerned in soliciting or receiving any assessment, subscription, or contribution for any political party or purpose whatever. No person shall orally or by letter solicit or be in any manner concerned in soliciting any assessment, subscription, or contribution for any political party or purpose from any person holding an appointive office or position in the municipal government. No person shall use or promise to use his influence or official authority to secure any appointment or prospective appointment to any position in the service of the municipality as a reward or return for personal or partisan political service. No person shall take part in preparing any political assessment, subscription, or contribution with the intent that it should be sent or presented to or collected from any person in the service of the municipality, nor shall he knowingly send or present, directly or indirectly, in person or otherwise, any political assessment, subscription, or contribution to or request its payment by any person in such service.

(2) No person in the service of the municipality shall discharge, suspend, lay off, reduce in grade, or in any manner change the official rank or compensation of any person in such service or threaten to do so for withholding or neglecting to make any contribution of money or service or any valuable thing for any political service. No person holding an appointive office or place in the municipal government shall act as an officer in a political organization or serve as a member of a committee of any such organization or circulate or seek signatures for any petition provided for by primary or election laws.

(3) Any person who, by himself or in cooperation with one or more persons, willfully or corruptly violates any of the provisions of subsections (1) and (2) shall be guilty of a misdemeanor and shall upon conviction thereof be punished by a fine of not less than $50 or more than $500 or by imprisonment for a term not exceeding 3 months or by both such fine and imprisonment, and if he is an officer or employee of the municipality, he shall immediately forfeit his office or employment.

History: En. Secs. 108, 109, 110, Ch. 121, L. 1923; re-en. Secs. 5520.109, 5520.110, 5520.111, R.C.M. 1935; R.C.M. 1947, 11-3549, 11-3550, 11-3551.

Cross-References

Rules of conduct for local government officers and employees, 2-2-125.

7-3-1255. Commissioners not to hold or seek other office. No person elected to the commission shall, during the term for which elected, be appointed to any office or position in the service in the municipality. If a member of the commission shall become a candidate for any public office other than that of commissioner, he shall immediately forfeit his place on the commission.

History: En. Sec. 111, Ch. 121, L. 1923; re-en. Sec. 5520.112, R.C.M. 1935; R.C.M. 1947, 11-3552(part).

7-3-1256. Appointive officers not to seek other office. Any appointive officer or employee of the municipality who shall become a candidate for nomination or election to any public office shall immediately forfeit the office or employment held under the municipality.

History: En. Sec. 111, Ch. 121, L. 1923; re-en. Sec. 5520.112, R.C.M. 1935; R.C.M. 1947, 11-3552(part).

Cross-References
Mandatory leave of absence — appointive employees holding public office, 2-18-620.

7-3-1257. Control of conflict of interest. No officer or employee of the municipality shall have a financial interest, direct or indirect, in any contract therewith or be financially interested, directly or indirectly, in the sale to the municipality of any land, materials, supplies, or services except on behalf of the municipality as an officer or employee. Any willful violation of this section shall constitute malfeasance in office, and any officer or employee found guilty thereof shall thereby forfeit his office or position. Any violation of this section with the knowledge, actual or implied, of the person or corporation contracting with the municipality shall render the contract involved voidable by the manager or the commission.

History: En. Sec. 114, Ch. 121, L. 1923; re-en. Sec. 5520.115, R.C.M. 1935; R.C.M. 1947, 11-3555.

Cross-References
Rules of conduct for local government personnel, 2-2-125.
Official misconduct, 45-7-401.

7-3-1258. Official bonds. (1) The members of the commission, the manager, the director of finance, the purchasing agent, the director of law, the director of police, and such other officers and employees of the municipality as the commission requires to do so shall, immediately upon taking office, give bonds with such surety as may be approved by the commission; but no officer or employee shall become surety upon the official bond of another officer or employee. Members of the commission shall give bonds in the sum of $5,000 and other officers and employees shall give bonds in such amounts as the commission may require. The premium on all official bonds shall be paid by the municipality.

(2) All such bonds, except those of the manager and the director of finance, shall be filed with the director of finance. The official bonds of the manager and the director of finance shall be filed with and kept by the director of the department of law.

History: En. Sec. 112, Ch. 121, L. 1923; re-en. Sec. 5520.113, R.C.M. 1935; R.C.M. 1947, 11-3553.

Cross-References
Bonds of city officers and employees, Title 2, ch. 9, part 8.

7-3-1259. Oath of office. Every officer of the municipality shall, before entering upon the duties of his office, take and subscribe to the oath or affirmation required of officers by the constitution of the state of Montana, which oath or affirmation shall be filed and kept in the office of the clerk.

History: En. Sec. 113, Ch. 121, L. 1923; re-en. Sec. 5520.114, R.C.M. 1935; R.C.M. 1947, 11-3554.

Cross-References
Oath of office, Art. III, sec. 3, Mont. Const.

7-3-1260 through 7-3-1270 reserved.

7-3-1271. General provisions related to elections. (1) For any election held on the question of the adoption of this part and part 13 and for the first election of members of the commission thereunder if adopted, the county election administrator and board of county commissioners shall exercise the powers and perform the duties respecting elections prescribed for county election administrators and boards of county commissioners by the general laws of the state.

(2) After the adoption of this part and part 13 by the electors of the county and the election and qualification of a commission thereunder, elections shall be conducted as provided in Title 7 and Title 13.

History: En. Secs. 89, 90, Ch. 121, L. 1923; re-en. Secs. 5520.90, 5520.91, R.C.M. 1935; R.C.M. 1947, 11-3530, 11-3531(part); amd. Sec. 385, Ch. 571, L. 1979.

7-3-1272 through 7-3-1280. Repealed. Sec. 407, Ch. 571, L. 1979.

Compiler's Comments

Histories of Repealed Sections:

7-3-1272. En. Sec. 90, Ch. 121, L. 1923; re-en. Sec. 5520.91, R.C.M. 1935; R.C.M. 1947, 11-3531(part).

7-3-1273. En. Secs. 91, 93, Ch. 121, L. 1923; re-en. Secs. 5520.92, 5520.94, R.C.M. 1935; R.C.M. 1947, 11-3532, 11-3534(part).

7-3-1274. En. Sec. 92, Ch. 121, L. 1923; re-en. Sec. 5520.93, R.C.M. 1935; R.C.M. 1947, 11-3533.

7-3-1275. En. Sec. 93, Ch. 121, L. 1923; re-en. Sec. 5520.94, R.C.M. 1935; R.C.M. 1947, 11-3534(part).

7-3-1276. (1)En. Sec. 94, Ch. 121, L. 1923; re-en. Sec. 5520.95, R.C.M. 1935; Sec. 11-3535, R.C.M. 1947; (2)En. Sec. 96, Ch. 121, L. 1923; re-en. Sec. 5520.97, R.C.M. 1935; Sec. 11-3537, R.C.M. 1947; (3)En. Sec. 95, Ch. 121, L. 1923, re-en. Sec. 5520.96, R.C.M. 1935; Sec. 11-3536, R.C.M. 1947; R.C.M. 1947, 11-3535(part), 11-3536, 11-3537.

7-3-1277. En. Sec. 94, Ch. 121, L. 1923; re-en. Sec. 5520.95, R.C.M. 1935; R.C.M. 1947, 11-3535(part).

7-3-1278. En. Sec. 97, Ch. 121, L. 1923; re-en. Sec. 5520.98, R.C.M. 1935; R.C.M. 1947, 11-3538.

7-3-1279. En. Sec. 98, Ch. 121, L. 1923; re-en. Sec. 5520.99, R.C.M. 1935; R.C.M. 1947, 11-3539(part).

7-3-1280. En. Sec. 98, Ch. 121, L. 1923; re-en. Sec. 5520.99, R.C.M. 1935; R.C.M. 1947, 11-3539(part).

Part 13

City-County Consolidation
Option 2 — Continued

7-3-1301. Department of finance. (1) The director of finance has charge of the administration of the financial affairs of the municipality, including the keeping and supervision of all accounts; the custody and disbursement of municipal funds and money; the making of special assessments; the issuance of licenses; the collection of license fees; the control over expenditures; the purchase, storage, and distribution of supplies needed by the municipality; and other duties as the commission may by ordinance require.

(2) The director of finance has all powers and shall perform all duties imposed upon county clerk and recorders and auditors by general law.

(3) All of the provisions of the general laws of the state with respect to budgets for cities and counties apply to the municipality.

History: En. Secs. 45, 54, Ch. 121, L. 1923; re-en. Secs. 5520.45, 5520.54, R.C.M. 1935; R.C.M. 1947, 11-3445, 11-3454(part); amd. Sec. 4, Ch. 27, Sp. L. November 1993.

Cross-References

Duties of Clerk and Recorder, Title 7, ch. 4, part 26.

County Auditor, 7-4-3003.

County and municipal finance, Title 7, ch. 6.

7-3-1302. Fiscal year. The fiscal year of the municipality shall begin with July 1 and shall end with the succeeding June 30.

History: En. Sec. 54, Ch. 121, L. 1923; re-en. Sec. 5520.54, R.C.M. 1935; R.C.M. 1947, 11-3454(part).

7-3-1303. Monthly financial statements. The director of finance shall prepare and submit to the commission each month a summary statement of revenues and expenses for the preceding month, detailed as to appropriations and funds in such manner as shows the exact financial condition of the municipality and of each department and office thereof as of the last day of such month.

History: En. Sec. 46, Ch. 121, L. 1923; re-en. Sec. 5520.46, R.C.M. 1935; R.C.M. 1947, 11-3446.

7-3-1304. Division of audit and accounts. There shall be in the department of finance a division of audit and accounts, of which the director of finance shall himself be the head. As head of such office he shall be charged with keeping the books of financial account for all departments and offices of the municipality, and whenever practicable, such books and accounts shall be kept in the office of the division of audit and accounts. Report shall be made daily to the division of audit and accounts by each department and office, showing the receipt of all money and the disposition thereof.

History: En. Sec. 47, Ch. 121, L. 1923; re-en. Sec. 5520.47, R.C.M. 1935; R.C.M. 1947, 11-3447.

7-3-1305. Conduct of audits. (1) Upon the death, resignation, removal, or expiration of the term of any officer of the municipality, the director of finance shall cause an audit and investigation of the accounts of such officer to be made and shall report to the manager and the commission. Either the commission or the manager may at any time provide for an examination or audit of the accounts of any officer or department of the municipal government.

(2) In case of the death, resignation, or removal of the director of finance, the manager shall cause an audit to be made of his accounts.

(3) If, as a result of any such audit, an officer is found indebted to the municipality, the director of finance or other person making such audit shall immediately give notice thereof to the commission, the manager, and the director of law, and the latter shall forthwith proceed to collect such indebtedness.

History: En. Sec. 48, Ch. 121, L. 1923; re-en. Sec. 5520.48, R.C.M. 1935; R.C.M. 1947, 11-3448.

7-3-1306. Division of treasury. (1) There shall be in the department of finance a division of the treasury, the head of which shall be treasurer of the municipality, shall have the powers and perform the duties prescribed for city treasurers and county treasurers by general law, and shall be required to qualify by giving a bond in the same amount required of county treasurers of counties of the same class.

(2) All money received by an officer or employee of the municipality for or in connection with the business of the municipality shall be paid promptly into the treasury. The commission shall by ordinance provide for the prompt and regular payment of such money into the treasury and shall also, in the manner hereinafter provided, designate the banking institutions with which it shall be deposited.

History: En. Sec. 49, Ch. 121, L. 1923; re-en. Sec. 5520.49, R.C.M. 1935; R.C.M. 1947, 11-3449.

Cross-References

County Treasurer, 7-4-3002.

Bond for County Treasurer, 7-4-4109.

City Treasurer, 7-4-4701.

7-3-1307. Division of purchases and supplies. There shall be in the department of finance a division of purchases and supplies, at the head of which there shall be a purchasing agent. The purchasing agent shall make all purchases for the municipality in the manner and with such exceptions as may be provided by ordinance and shall, under such regulations as may be provided by ordinance, sell all property, real and personal, of the municipality not needed for public use or that may have become unsuitable for use. He shall have charge of such storerooms and warehouses of the municipality as the commission may by ordinance provide.

History: En. Sec. 50, Ch. 121, L. 1923; re-en. Sec. 5520.50, R.C.M. 1935; R.C.M. 1947, 11-3450.

7-3-1308. Procedure for purchase, sale, and supply. (1) Before making any purchase or sale, the purchasing agent shall give opportunity for competition, under such rules as the commission may by ordinance establish.

(2) Supplies required by any department or office of the municipality may be furnished upon requisition from the stores under the control of the purchasing agent and whenever so furnished shall be paid for by the department or office furnished therewith by warrant made payable to the credit of the store's account of the division of purchases and supplies. The purchasing agent shall not furnish any supplies to any department or office unless there is to the credit thereof an available unencumbered appropriation balance sufficient to pay for such supplies.

History: En. Sec. 51, Ch. 121, L. 1923; re-en. Sec. 5520.51, R.C.M. 1935; R.C.M. 1947, 11-3451.

Cross-References

Municipal contracts, Title 7, ch. 5, part 43.

7-3-1309. Division of assessment. (1) There may be in the department of finance a division of assessment, the head of which may be the assessor. The division of assessment has the powers of and shall perform the duties prescribed for county assessors by general law.

(2) The division of assessment is in charge of the preparation of all special assessments for public improvements, the giving of notice of the assessments to property owners and purchasers of property under contracts for deed, and the certification of all unpaid assessments to the director of finance.

History: En. Secs. 52, 53, Ch. 121, L. 1923; re-en. Secs. 5520.52, 5520.53, R.C.M. 1935; R.C.M. 1947, 11-3452, 11-3453; amd. Sec. 3, Ch. 526, L. 1983; amd. Sec. 5, Ch. 27, Sp. L. November 1993.

Cross-References

County Assessor, 15-8-102.

7-3-1310. Limitation on tax levy. (1) No ordinance making the annual tax levy shall be passed fixing the rate to be levied upon all property within the municipality to defray current expenses, including salaries otherwise unprovided for, in excess of the maximum levies prescribed by law for general fund purposes in the county and the cities and towns which have been consolidated into a single government.

(2) The tax limit provided by subsection (1) shall apply only to taxes for the purposes therein specified. Taxes required by this part or part 12 to be levied on account of the debt of the municipality or any district thereof and special taxes authorized by this part or part 12 or by the general laws of the state shall not be affected by such limits, nor shall such taxes be considered in determining the limits of taxation fixed by subsection (1).

History: (1)En. Sec. 55, Ch. 121, L. 1923; re-en. Sec. 5520.55, R.C.M. 1935; amd. Sec. 1, Ch. 81, L. 1967; Sec. 11-3455, R.C.M. 1947; (2)En. Sec. 56, Ch. 121, L. 1923; re-en. Sec. 5520.56, R.C.M. 1935; Sec. 11-3456, R.C.M. 1947; R.C.M. 1947, 11-3455, 11-3456.

Cross-References

Municipal all-purpose mill levy, 7-6-4451 through 7-6-4455.

7-3-1311. Authority for special taxes and special service districts. (1) The municipality shall have the power and authority to levy special taxes for all purposes which counties, cities, and towns are authorized to levy by general laws of the state, and all of the provisions of such laws shall be applicable to and shall govern and control the municipality in the levying and collection of such special taxes.

(2) The commission may by ordinance designate clearly specified districts in or for which special services are to be performed and may levy upon the property in any such district such tax, in addition to any taxes authorized by 7-3-1310(1), as may be necessary with other available funds and grants to pay the cost of such special service or services. The boundaries of special service districts shall be regularly reviewed by the commissioners and may be adjusted upon recommendation by an authorized planning body in response to changing population patterns. In no case shall such additional levy be more than 20 mills.

History: (1)En. Sec. 57, Ch. 121, L. 1923; re-en. Sec. 5520.57, R.C.M. 1935; Sec. 11-3457, R.C.M. 1947; (2)En. Sec. 1, Ch. 162, L. 1925; re-en. Sec. 5520.58, R.C.M. 1935; amd. Sec. 2, Ch. 81, L. 1967; Sec. 11-3458, R.C.M. 1947; R.C.M. 1947, 11-3457, 11-3458.

Cross-References

Service districts, Title 7, ch. 12.

7-3-1312. Collection of taxes. All taxes levied by the municipality shall be collected and payable in the manner, at the time, and under the penalties prescribed by law for the collection and payment of state and county taxes.

History: En. Sec. 58, Ch. 121, L. 1923; re-en. Sec. 5520.59, R.C.M. 1935; R.C.M. 1947, 11-3459.

Cross-References

County and municipal taxation, Title 7, ch. 6.

7-3-1313. Special taxing districts for indebtedness existing prior to consolidation. (1) The district comprised within the boundaries of any city, town, or district existing within the county at the time of the adoption of this part and part 12 by the electors thereof shall, for the purpose of paying the interest and principal of any debt incurred by such city, town, or district prior to such adoption, be continued as a special district until such debt shall have been paid. The commission shall, in the annual tax levy ordinance, levy upon the property within each such district such tax, in addition to all other taxes, as the director of finance shall report to be necessary to provide for paying the interest on each such debt as it falls due and the principal thereof as it matures, and no other property within the municipality shall be taxable or made liable for the payment of any such debt.

(2) The commission shall likewise provide in the annual tax levy ordinance for the levy of such tax upon all property within the municipality as the director of finance shall report to be necessary to provide for paying the interest as it falls due and the principal as it matures of any debt of the municipality as a whole.

(3) The tax levy for the debt of the municipality as a whole and the tax levy for the debt of each such district shall each be a separate levy and shall be distinct from and in addition to all other tax levies. The proceeds of each such tax levy shall be placed in a separate fund for the payment of the interest and principal of the debt for which the tax was levied, and no part of any such fund shall be used for any other purpose whatever.

History: En. Sec. 59, Ch. 121, L. 1923; re-en. Sec. 5520.60, R.C.M. 1935; R.C.M. 1947, 11-3460.

7-3-1314. Payment and investigation of claims — use of warrants. (1) No claim against the municipality shall be paid except by means of a warrant on the treasury issued by the director of finance. The director of finance shall issue no warrant for the payment of a claim unless the claim is evidenced by a voucher approved by the head of the department or office for which the indebtedness was incurred, and each such officer and his surety shall be liable to the municipality for all loss or damage sustained by reason of his negligent or corrupt approval of any claim.

(2) The director of finance shall examine all payrolls, bills, and other claims and demands against the municipality and shall issue no warrant for payment unless he finds that the claim is in proper form, correctly computed, and duly approved; that it is legally due and payable; and that an appropriation has been made therefor which has not been exhausted. He may investigate any claimant and for that purpose may summon before him any officer, agent, or employee of the municipality or any claimant or other person and examine him upon oath or affirmation relative thereto. If he finds a claim to be fraudulent, erroneous, or otherwise invalid or that the appropriation out of which such claim is payable has been exhausted, he shall not issue a warrant therefor. If the director of finance issues a warrant on the treasury authorizing payment of any claim in contravention of the provisions of this subsection, he and his sureties shall be individually liable to the municipality for the amount of such warrant if paid.

History: En. Secs. 60, 61, Ch. 121, L. 1923; re-en. Secs. 5520.61, 5520.62, R.C.M. 1935; R.C.M. 1947, 11-3501, 11-3502.

7-3-1315. Certification of certain obligations by finance director. (1) No contract, agreement, or other obligation, other than contracts pertaining to work or improvements to be paid for by special assessments, involving the expenditure of any funds shall be entered into nor shall any order for such expenditures be valid unless the director of finance shall first certify to the commission that the object or purpose for which such expenditure is to be made and the amount thereof is provided for by an appropriation in the annual budget or in a supplemental budget and that the same has not been expended. The certificate of the director of finance shall be filed and made a matter of record in his office, and the appropriation for such purpose shall thereafter be considered as having been set aside and expended to the amount of such contract, agreement, or obligation.

(2) All contracts, agreements, or other obligations entered into, all ordinances and resolutions passed, and all orders adopted contrary to the provisions of subsection (1) shall be void, and no person whatever shall have any claim or demand against the municipality thereunder, nor shall the commission or any officer of the municipality waive or qualify the limitations fixed by subsection (1) or fasten upon the municipality any liability whatever in excess thereof.

History: En. Secs. 62, 63, Ch. 121, L. 1923; re-en. Secs. 5520.63, 5520.64, R.C.M. 1935; R.C.M. 1947, 11-3503, 11-3504.

7-3-1316. Designation of depository banks. On or before August 1 of each year, the commission shall designate the banks subject to state or national supervision in which the funds of the municipality shall be deposited. In designating such banks, the commission shall specify the maximum amount of municipal funds that may be kept at any time in each.

History: En. Sec. 64, Ch. 121, L. 1923; re-en. Sec. 5520.65, R.C.M. 1935; R.C.M. 1947, 11-3505(part).

7-3-1317. Deposit security. (1) Unless a bank designated as a depository shall elect to deposit securities with the treasurer as provided in subsection (2), it shall give good and sufficient bonds, with sureties to be approved by the commission, conditioned for the safekeeping and payment of the municipal funds deposited therewith and the interest thereon. Any such bonds of a depository shall be in the aggregate equal to the amount designated by the commission as the maximum of municipal funds which may at any time be kept by such depository. All surety bonds given by a bank in accordance with the provisions of this subsection shall continue in force so long as funds of the municipality deposited therein shall be unpaid. Nothing provided herein shall impair the rights and remedies of the municipality on such bonds under the laws of the state.

(2) In lieu of the surety bonds specified in subsection (1), any bank designated as a depository of municipal funds may deposit with the treasurer bonds of the class and kind in which, by the provisions of 7-3-1322, the sinking fund of the municipality may be invested. Bonds so deposited shall be in an amount equal to the amount of municipal funds permitted at any time to be deposited with such bank, shall be approved by the commission, and shall be accompanied by proper assignment, to the end that the bank so depositing and assigning such bonds will safely keep and pay over to the treasurer or his order, on demand and free of exchange, all money at any time deposited therein with interest thereon at the rate agreed upon and that in case of default on the part of such bank, the commission shall have power and authority to sell such bonds or so much thereof as may be necessary to realize the full amount of the funds deposited therein. The bank shall be entitled to interest on the securities so deposited with the treasurer, when paid, and to the return of the securities at the termination of such trust so long as the bank is not in default. With the approval of the commission, a bank may at any time substitute other like securities of equal value for those so deposited.

(3) Bonds and other securities given by banks in accordance with this part shall be entered in a record to be kept for that purpose by the director of finance and deposited with the treasurer for safekeeping. The record of such bonds and securities kept by the director of finance or copies thereof certified by that officer shall be competent and prima facie evidence of the contents and tenor thereof.

History: En. Secs. 64, 65, 67, Ch. 121, L. 1923; re-en. Secs. 5520.65, 5520.66, 5520.68, R.C.M. 1935; R.C.M. 1947, 11-3505(part), 11-3506, 11-3508.

Cross-References

Deposit of public money, Title 7, ch. 6, part 2.

7-3-1318. Additional or new deposit security. Whenever for any cause the commission shall deem the bonds or securities of any bank insufficient security for the municipal funds deposited or likely to be deposited therein, the commission shall require new bonds to be given or new securities to be deposited with the treasurer. If any bank shall fail promptly to execute and present such new bonds or deposit such new securities, the treasurer shall at once withdraw all deposits therefrom, and no further deposit of municipal funds shall be made therein until such bank shall have been redesignated by the commission as a depository.

History: En. Sec. 66, Ch. 121, L. 1923; re-en. Sec. 5520.67, R.C.M. 1935; R.C.M. 1947, 11-3507.

Cross-References

Deposit of public money, Title 7, ch. 6, part 2.

7-3-1319. Deposit of funds with depository banks. (1) All funds received by the treasurer shall be deposited by him in the designated banks in the name of the municipality, subject to the order of the treasurer, and shall be distributed among the designated banks as nearly as may be in proportion to the maximum amounts which they have been authorized to receive by the commission.

(2) Banks designated as depositories shall pay interest on daily balances of municipal funds at a rate approved by the commission, which shall in no case be less than 2 1/2%. The interest due on such deposits shall be paid to the treasurer by check on the last day of each quarter of the fiscal year. If the treasurer shall at any time receive or have in any bank funds which will probably remain on deposit 3 months or longer, he may, with the approval of the commission, either take therefor certificates of deposit from a designated depository, payable to his order on demand and bearing a higher rate of interest, or invest such funds in any bonds maturing within 6 months in which the sinking fund of the municipality may be invested. The treasurer shall make a monthly statement to the director of finance of the municipal funds in each bank and the interest received therein, as of the last day of each month.

(3) No bank receiving funds of the municipality on deposit shall have authority to pay out any such money except upon checks drawn upon that bank signed by the treasurer.

History: (1)En. Sec. 68, Ch. 121, L. 1923; re-en. Sec. 5520.69, R.C.M. 1935; Sec. 11-3509, R.C.M. 1947; (2)En. Sec. 69, Ch. 121, L. 1923; re-en. Sec. 5520.70, R.C.M. 1935; Sec. 11-3510, R.C.M. 1947; (3)En. Sec. 70, Ch. 121, L. 1923; re-en. Sec. 5520.71, R.C.M. 1935; Sec. 11-3511, R.C.M. 1947; R.C.M. 1947, 11-3509, 11-3510, 11-3511.

Cross-References

Deposit of public money, Title 7, ch. 6, part 2.

7-3-1320. Liability for deposited funds. (1) When the funds of the municipality are deposited and kept in designated banks according to the provisions of this part, the treasurer and the sureties on his official bond shall be exempt from all liability for the loss of any funds so deposited if such loss is caused by the failure, bankruptcy, or any other act or default of such banks, but the want of care or due diligence on the part of the treasurer or commission in protecting the municipality against loss shall not exempt the treasurer, the members of the commission, or sureties on their respective bonds from liability.

(2) Nothing provided herein shall deprive the municipality of any right or remedy against any defaulting bank or against its officers or stockholders.

History: En. Sec. 71, Ch. 121, L. 1923; re-en. Sec. 5520.72, R.C.M. 1935; R.C.M. 1947, 11-3512.

Cross-References

Deposit of public money, Title 7, ch. 6, part 2.

7-3-1321. Authorization to incur indebtedness — limitation. (1) The consolidated municipality may borrow money or issue bonds for any municipal purpose to the extent and in the manner provided by the constitution and laws of Montana for the borrowing of money or issuing of bonds by counties and cities and towns.

(2) The municipality may not become indebted in any manner or for any purpose to an amount, including existing indebtedness, in the aggregate exceeding 28% of the taxable value of the taxable property therein, as ascertained by the last assessment for state and county taxes prior to incurring such indebtedness. All warrants, bonds, or obligations in excess of such amount given by or on behalf of the municipality shall be void.

History: En. Secs. 72, 73, Ch. 121, L. 1923; re-en. Secs. 5520.73, 5520.74, R.C.M. 1935; R.C.M. 1947, 11-3513, 11-3514; amd. Sec. 39, Ch. 614, L. 1981.

Cross-References

Debt management, Title 7, ch. 7.

7-3-1322. Investment of sinking funds. (1) The sinking funds of the municipality shall be in charge of a sinking fund board consisting of the president, the director of finance, and the director of law. The president shall be the chairman and the director of finance, the secretary of the board. By and with consent of the commission, the sinking fund board shall invest the sinking fund in bonds or certificates of indebtedness of the United States, state bonds or certificates of indebtedness of Montana or any other state of the United States, bonds of the municipality, registered warrants on the treasury of such municipality, bonds of any city in Montana, and in such county or school bonds of Montana as may be approved by the commission.

(2) In case the sinking fund is invested in bonds of the municipality, such bonds shall not be canceled before maturity but shall be held by the sinking fund board and the interest thereon paid over and applied to the increase of the sinking fund. Whenever the principal of any of the bonds of the municipality shall become due, the sinking fund board shall, with the consent of the commission, dispose of such of the bonds belonging to the sinking fund as, with

the money on hand belonging to the sinking fund, shall be necessary to pay the bonds so becoming due.

History: En. Sec. 74, Ch. 121, L. 1923; re-en. Sec. 5520.75, R.C.M. 1935; R.C.M. 1947, 11-3515.

7-3-1323. Competitive, advertised bidding required for certain contracts. All contracts entered into by the municipality for supplies or materials, for any public work, or for the construction, reconstruction, repair, maintenance, or operation of any public works or improvements, for which must be paid a sum exceeding $2,000, shall be awarded to the lowest responsible bidder after public advertisement and competition as may be prescribed by ordinance, but the manager shall have the right to reject all bids and advertise again. All advertisements as to contracts shall contain a reservation of the foregoing right. All contracts entered into by the municipality shall be signed by the manager after approval thereof by the commission.

History: En. Sec. 75, Ch. 121, L. 1923; re-en. Sec. 5520.76, R.C.M. 1935; amd. Sec. 1, Ch. 80, L. 1967; R.C.M. 1947, 11-3516.

Cross-References

Municipal contracts, Title 7, ch. 5, part 43.

7-3-1324. Alteration of contracts. When it becomes necessary in the opinion of the manager to make alterations or modifications in any contract entered into by the municipality, such alterations shall be made only when authorized by the commission upon the written recommendation of the manager. No such alteration shall be valid unless the new price to be paid for any supplies, material, or work under the altered or modified contract shall have been agreed upon in writing and signed by the contractor and the manager prior to such authorization by the commission.

History: En. Sec. 76, Ch. 121, L. 1923; re-en. Sec. 5520.77, R.C.M. 1935; R.C.M. 1947, 11-3517.

Cross-References

No law impairing obligation of contracts, Art. II, sec. 31, Mont. Const.

7-3-1325 through 7-3-1330 reserved.

7-3-1331. Department of public works. (1) The department of public works is in the charge of a director, who shall manage and have charge of the construction, repair, improvement, and maintenance of all public buildings; of roads, streets, alleys, sidewalks, bridges, viaducts, and other public ways; of sewers, drains, ditches, culverts, streams, and watercourses; and of boulevards, parks, playgrounds, cemeteries, and other public places and grounds dedicated to public use. He shall manage and control all public cemeteries, crematories, market places or houses, garbage and sewage disposal plants and farms, and all public utilities belonging to the municipality or any subdivision thereof and shall have charge of the enforcement of the obligations to the municipality of all privately owned or operated public utilities enforceable by the municipality. He shall have charge of the cleaning, sprinkling, and lighting of the streets and the collection and disposal of garbage and waste. He shall also be responsible for the making and preservation of all surveys, maps, plans, drawings, and estimates for such public work and for the preservation of contracts, papers, plans, tools, and appliances belonging to the municipality and pertaining to the functions of the department.

(2) The director of public works shall have the qualifications prescribed by law for county surveyors, and in addition to the duties required by this part or part 12 and by the ordinances of the municipality, he shall have the powers and shall, either in person or by a deputy having the qualifications prescribed by law for county surveyors, perform the duties required of county surveyors by the laws of the state.

History: (1)En. Sec. 78, Ch. 121, L. 1923; re-en. Sec. 5520.79, R.C.M. 1935; Sec. 11-3519, R.C.M. 1947; (2)En. Sec. 79, Ch. 121, L. 1923; re-en. Sec. 5520.80, R.C.M. 1935; Sec. 11-3520, R.C.M. 1947; R.C.M. 1947, 11-3519, 11-3520; amd. Sec. 12, Ch. 262, L. 1979.

Cross-References

County Surveyor, Title 7, ch. 4, part 28.

7-3-1332. Public works and improvements. (1) Any local public work may be done or any local public works or improvements may be constructed, reconstructed, repaired, maintained, or operated, either by contract or directly by the municipality, as may be determined by the commission. Before authorizing that any local public works or improvements be directly constructed, reconstructed, repaired, maintained, or operated, detailed plans and estimates for each such work or improvement shall be submitted to the commission by the manager, and there shall be separate accounting for each work or improvement so executed.

(2) The municipality shall have the same power and authority to create special improvement districts and for like purposes and to create special lighting districts and maintenance districts for cities and towns as provided by the laws of the state.

(3) The director of public works shall be the engineer in charge of all such work, works, or improvements. The provisions of the general law of the state regarding special improvement districts, special lighting districts, and maintenance districts in cities and towns shall apply to and control the establishment under this part of special improvement districts, special lighting districts, and maintenance districts in and for the municipality and the procedure according to which any local public work or the construction, reconstruction, repair, maintenance, or operation of any local public work or improvement is to be provided for when the cost thereof is to be paid in whole or in part by assessments upon the property within any such district, and such general law shall also apply to the manner of levying and collecting such assessments.

History: (1)En. Sec. 86, Ch. 121, L. 1923; re-en. Sec. 5520.87, R.C.M. 1935; Sec. 11-3527, R.C.M. 1947; (2)En. Sec. 87, Ch. 121, L. 1923; re-en. Sec. 5520.88, R.C.M. 1935; Sec. 11-3528, R.C.M. 1947; (3)En. Sec. 88, Ch. 121, L. 1923; re-en. Sec. 5520.89, R.C.M. 1935; Sec. 11-3529, R.C.M. 1947; R.C.M. 1947, 11-3527, 11-3528, 11-3529; amd. Sec. 1, Ch. 212, L. 1983.

Cross-References

Lighting districts, Title 7, ch. 12, part 22; Title 7, ch. 12, part 43.

Special improvement lighting districts, Title 7, ch. 12, part 41.

Maintenance districts, Title 7, ch. 12, part 44.

7-3-1333 through 7-3-1340 reserved.

7-3-1341. Department of law. (1) The department of law is in the charge of a director to be appointed by the commission without definite term, who shall be a resident and elector of the municipality and who shall possess all of the qualifications required of county attorneys.

(2) He shall have all the powers and, either personally or by such assistants as he may designate, shall perform all the duties that are prescribed for county attorneys, city attorneys, and public administrators, and in addition thereto, he shall be chief legal adviser of and attorney and counsel for the municipality and of all departments and offices thereof and shall perform such other duties as may be required by the commission.

(3) He shall qualify by taking the oath of office prescribed by the constitution and giving a bond in the amount required of a public administrator in a county of the same class. He shall receive from the state as part of his salary the same amount which is paid by the state to county attorneys in counties of the same class, and the remainder of his salary shall be paid by the municipality. For all purposes in connection with criminal prosecutions he shall be known and designated as "county attorney of the city and county of .....".

History: En. Sec. 44, Ch. 121, L. 1923; re-en. Sec. 5520.44, R.C.M. 1935; R.C.M. 1947, 11-3444; amd. Sec. 13, Ch. 262, L. 1979.

Cross-References

Oath, Art. III, sec. 3, Mont. Const.; 7-3-1259, 7-4-101.

Bonds, 7-3-1258.

State payment to County Attorneys, 7-4-2502.

County Attorney, Title 7, ch. 4, part 27.

City Attorney, Title 7, ch. 4, part 46.

7-3-1342. City court. (1) A city court is established in and for each municipality, with the jurisdiction, powers, and duties within the municipality provided by general law for city courts in cities and towns and for justices of the peace.

(2) The commission shall by ordinance determine the number of judges required for operation of the city court. City court judges are to be elected every 4 years in a nonpartisan election held in conjunction with the regularly scheduled general election. The term of office for city judge is 4 years.

(3) The qualifications to hold the office of city judge shall be set by ordinance by the commission. The ordinance shall be consistent with any rules adopted by the Montana supreme court on city judge qualifications.

(4) Whenever a vacancy occurs in the office of city judge, the commission shall appoint a qualified individual to serve for the remainder of the term. The compensation of the city judge or judges shall be fixed by the commission.

History: En. Sec. 85, Ch. 121, L. 1923; re-en. Sec. 5520.86, R.C.M. 1935; R.C.M. 1947, 11-3526; amd. Sec. 14, Ch. 262, L. 1979.

Cross-References

Justices' Courts, Title 3, ch. 10.

City Courts, Title 3, ch. 11.

7-3-1343. Police department. (1) The police department is in the charge of a director, who shall be chief of the police force of the municipality. The director shall have the powers and perform the duties conferred on and required of sheriffs.

(2) Officers and patrol officers of the police department, subordinate to the director, have the powers and duties conferred on and required of police officers and patrol officers in cities and towns by the laws of this state and such powers and duties as may be conferred and required by the ordinances of the

municipality. Police officers and patrol officers have the powers and duties conferred on and required of deputy sheriffs by the general laws of the state.

(3) For the purpose of serving and making return on all criminal and civil process, executing judgments, decrees, and orders of court, and making sales thereunder and returns thereof, the director shall be known and designated as Sheriff of the city and county of ...., and each police officer and patrol officer shall be known and designated as deputy sheriff.

History: En. Sec. 77, Ch. 121, L. 1923; re-en. Sec. 5520.78, R.C.M. 1935; amd. Sec. 1, Ch. 190, L. 1961; R.C.M. 1947, 11-3518(part); amd. Sec. 15, Ch. 262, L. 1979; amd. Sec. 1, Ch. 217, L. 1989.

Cross-References

Local government law enforcement, Title 7, ch. 32.

7-3-1344. Prior rights of law enforcement officers. (1) A police officer employed by any police department or departments established as required by law in any city or town of the county or a deputy sheriff employed by the county sheriff's department prior to the election and qualification of a commission under part 12 and this part has the same job tenure rights as though the election and qualification had not taken place.

(2) A police officer who has vested rights in a police retirement fund shall maintain prior vested rights in the fund upon its transfer to a consolidated county municipality. Any police retirement fund established as required by law in any city or town of the county prior to the election and qualification of a commission under part 12 and this part must be continued as a retirement fund for the police department of the municipality, subject, however, to the prior vested rights of a police officer employed by any police department or departments established as required by law in any city or town of the county prior to the election and qualification of a commission under part 12 and this part. The board of trustees of the police retirement fund shall consist of the president, the director of finance, the director of law, and two members of the police department from the active list of the police officers of the municipality who must be selected by a majority vote of the members of the police department on the active list of the municipality. The selection must be made between May 1 and May 10 each year, and the active police officer members of the board shall serve overlapping 2-year terms. Except as provided in this section, the police retirement fund must be continued and administered in the manner prescribed by law for retirement funds established in cities and towns.

History: En. Sec. 77, Ch. 121, L. 1923; re-en. Sec. 5520.78, R.C.M. 1935; amd. Sec. 1, Ch. 190, L. 1961; R.C.M. 1947, 11-3518(part); amd. Sec. 1, Ch. 114, L. 1979; amd. Sec. 1, Ch. 93, L. 1995.

Compiler's Comments

1995 Amendment: Chapter 93 in (1), after "county", inserted "or a deputy sheriff employed by the county sheriff's department"; and made minor changes in style.

Cross-References

Police retirement systems, Title 19, ch. 9 and 19.

7-3-1345. Fire department. (1) The fire department of the municipality is in the charge of a director, who shall be chief thereof and who shall manage and control the department in the manner prescribed by the ordinances of the municipality.

(2) (a) Notwithstanding any other provision of law, the adoption of a consolidated county municipal government shall have no effect on the existence, rights, or duties of any voluntary fire department or fire district created and legally in existence pursuant to the provisions of parts 21 and 23 of chapter 33.

(b) Nothing in this part or part 12 shall be construed to prohibit the creation of voluntary fire departments or fire districts pursuant to the provisions of parts 21 and 23 of chapter 33 within consolidated county municipalities.

(c) Voluntary fire departments or fire districts within consolidated county municipalities may only be organized, created, supported, financed, dissolved, and managed and their boundaries may only be changed pursuant to the provisions of parts 21 and 23 of chapter 33. These organizations may enter mutual aid agreements as provided by 7-33-2108.

History: En. Sec. 82, Ch. 121, L. 1923; re-en. Sec. 5520.83, R.C.M. 1935; amd. Sec. 1, Ch. 191, L. 1961; amd. Sec. 2, Ch. 2, L. 1965; R.C.M. 1947, 11-3523; amd. Sec. 16, Ch. 262, L. 1979.

7-3-1346. Department of health. The director of the department of health shall be a physician legally authorized to practice medicine and surgery in Montana. Except as otherwise provided in this part or part 12, the director of the department of health shall have the powers and perform the duties conferred on and required of coroners and county health officers and local health officers by the general laws of the state. He shall also have such other powers and perform such other duties as may be prescribed by ordinance.

History: En. Sec. 80, Ch. 121, L. 1923; re-en. Sec. 5520.81, R.C.M. 1935; R.C.M. 1947, 11-3521.

Cross-References

County Coroner, Title 7, ch. 4, part 29.

County health, Title 50, ch. 2.

7-3-1347. County board of health. (1) The commission shall be the county board of health in and for the municipality, but in performing the duties and exercising the powers prescribed by law for such boards, the commission shall act by ordinance, resolution, or vote and according to the procedure prescribed by this part and part 12 to be followed when acting as commission of the municipality. It shall not be necessary to the validity of any such action for the commission to declare or for the records thereof to indicate that it is acting in other than its usual capacity.

(2) Regulations affecting the public health additional to those established by general law and for the violation of which penalties are imposed may be prescribed by ordinance and enforced as provided therein.

History: En. Sec. 81, Ch. 121, L. 1923; re-en. Sec. 5520.82, R.C.M. 1935; R.C.M. 1947, 11-3522.

Cross-References

County Board of Health, Title 50, ch. 2.

7-3-1348. Superintendent of schools. The commission shall, by majority vote of all its members, appoint a municipal superintendent of schools to serve without definite term but subject to removal at the pleasure of the commission. The superintendent of schools for any district within the municipality may, with the consent of the trustees of such district, be appointed to serve as municipal superintendent. The compensation of the municipal superintendent shall be fixed by the commission, and he shall have the powers and perform the duties prescribed for county superintendents of schools by the laws of the state.

History: En. Sec. 84, Ch. 121, L. 1923; re-en. Sec. 5520.85, R.C.M. 1935; R.C.M. 1947, 11-3525.

Cross-References

County Superintendent of Schools — duties, Title 20, ch. 3, part 2.

Parts 14 through 20 reserved

Part 21

Optional Forms of County Government (Repealed. Sec. 1, Ch. 397, L. 1983)

Part Compiler's Comments

Histories of Repealed Sections:

7-3-2101. En. Sec. 2, Ch. 123, L. 1973; R.C.M. 1947, 16-5001.

7-3-2102. En. Sec. 3, Ch. 123, L. 1973; R.C.M. 1947, 16-5002.

7-3-2103. En. Sec. 4, Ch. 123, L. 1973; R.C.M. 1947, 16-5003(part).

7-3-2104. En. Sec. 4, Ch. 123, L. 1973; R.C.M. 1947, 16-5003(2); amd. Sec. 17, Ch. 262, L. 1979.

7-3-2105. En. Sec. 5, Ch. 123, L. 1973; R.C.M. 1947, 16-5004.

7-3-2106. En. Sec. 6, Ch. 123, L. 1973; R.C.M. 1947, 16-5005.

7-3-2107. En. Sec. 7, Ch. 123, L. 1973; R.C.M. 1947, 16-5006.

7-3-2108. En. Sec. 8, Ch. 123, L. 1973; R.C.M. 1947, 16-5007.

7-3-2109. En. Sec. 9, Ch. 123, L. 1973; R.C.M. 1947, 16-5008; amd. Sec. 18, Ch. 262, L. 1979.

7-3-2110. En. Sec. 10, Ch. 123, L. 1973; R.C.M. 1947, 16-5009.

7-3-2111. En. Sec. 12, Ch. 123, L. 1973; R.C.M. 1947, 16-5011.

7-3-2112. En. Sec. 11, Ch. 123, L. 1973; R.C.M. 1947, 16-5010(part).

7-3-2113. En. Sec. 11, Ch. 123, L. 1973; R.C.M. 1947, 16-5010(part).

7-3-2114. En. Sec. 13, Ch. 123, L. 1973; R.C.M. 1947, 16-5012.

7-3-2115. En. Sec. 14, Ch. 123, L. 1973; R.C.M. 1947, 16-5013.

7-3-2116. En. Sec. 21, Ch. 123, L. 1973; R.C.M. 1947, 16-5018.

7-3-2117. En. Sec. 22, Ch. 123, L. 1973; R.C.M. 1947, 16-5019.

7-3-2118 through 7-3-2130 reserved.

7-3-2131. En. Sec. 15, Ch. 123, L. 1973; R.C.M. 1947, 16-5014.

7-3-2132. En. Sec. 18, Ch. 123, L. 1973; R.C.M. 1947, 16-5015.

7-3-2133. En. Sec. 19, Ch. 123, L. 1973; R.C.M. 1947, 16-5016.

7-3-2134. En. Sec. 20, Ch. 123, L. 1973; R.C.M. 1947, 16-5017.

Parts 22 through 40 reserved

Part 41

Strong Mayor Municipal Government

Part Cross-References

Strong mayor form — option in commission-executive form of government, Title 7, ch. 3, part 2.

7-3-4101. Strong mayor form of municipal government. (1) The qualified electors of any city or town in this state may, in the manner provided in part 42 of chapter 5, cause an ordinance to be adopted which has as its subject the vesting of any or all of the following powers with the office of mayor of such city or town:

(a) to appoint and remove, without consent of the council, all nonelective officers of the city or town;

(b) to exercise absolute control over all departments and divisions of the city or town created in this title or that may be created by the council;

(c) to appoint one or more administrative assistants to assist him in the direction of the operations of the various city departments and agencies;

(d) to be solely responsible for the preparation of the annual budget in compliance with the procedures set forth in part 42 of chapter 6;

(e) to appoint a budget and finance director whose functions shall include the preparation of the annual municipal budget under the direction of the mayor.

(2) If any ordinance duly adopted in accordance with this section is in conflict with 7-4-4114, 7-4-4303 through 7-4-4306, 7-5-4102(1), 7-5-4122, 7-5-4205, and 7-5-4206, the provisions of this section shall prevail.

History: En. 11-802.1 by Sec. 1, Ch. 359, L. 1973; R.C.M. 1947, 11-802.1(part).

7-3-4102. Relationship of administrative assistants and budget and finance director to mayor. (1) The administrative assistants shall be answerable solely to the mayor.

(2) The budget and finance director shall be answerable solely to the mayor and shall serve at his pleasure.

History: En. 11-802.1 by Sec. 1, Ch. 359, L. 1973; R.C.M. 1947, 11-802.1(part).

Part 42

Municipal Commission Government

Part Cross-References

Weak mayor form of government — option within commission-executive form of government, Title 7, ch. 3, part 2.

7-3-4201. Definitions. In the construction of this part, the following rules shall be observed unless such construction would be inconsistent with the manifest intent or repugnant to the context of the statute:

(1) The words "councilman" or "alderman" shall be construed to mean "councilman" when applied to cities under this part.

(2) The word "electors" shall be construed to mean persons qualified to vote for elective offices at regular municipal elections.

(3) The words "franchise" or "right" shall include every special privilege in the streets, highways, and public places of the city, whether granted by the state or the city, which does not belong to citizens generally by common right.

(4) When an office or officer is named in any law referred to in this part, it shall, when applied to cities under this part, be construed to mean the office or officer having the same function or duties under the provisions of this part or under ordinances passed under authority thereof.

History: En. Sec. 28, Ch. 57, L. 1911; re-en. Sec. 5393, R.C.M. 1921; re-en. Sec. 5393, R.C.M. 1935; R.C.M. 1947, 11-3131.

Cross-References

Electors, Art. IV, sec. 2, Mont. Const.; 13-1-111.

7-3-4202. Authorization for commission form of municipal government. Any city may abandon its organization and reorganize under the provisions of this part by proceeding as hereinafter provided.

History: En. Sec. 1, Ch. 57, L. 1911; re-en. Sec. 5366, R.C.M. 1921; re-en. Sec. 5366, R.C.M. 1935; R.C.M. 1947, 11-3101.

7-3-4203. Effect of part on other local government laws. All acts and parts of acts and all laws, not inconsistent with any of the provisions of this part, now in force or hereafter enacted relative to municipal corporations are hereby continued in full force and effect and shall be considered and construed as not repealed by this part except insofar as the same may be in conflict or inconsistent with the provisions of this part.

History: En. Sec. 34, Ch. 57, L. 1911; re-en. Sec. 5399, R.C.M. 1921; re-en. Sec. 5399, R.C.M. 1935; R.C.M. 1947, 11-3137.

7-3-4204. Laws governing city. All laws governing cities of the first, second, and third classes and not inconsistent with the provisions of this part shall apply to and govern cities organized under this part. All bylaws, ordinances, and resolutions lawfully passed and in force in any such city under its former organization shall remain in force until altered or repealed by the council elected under the provisions of this part.

History: En. Sec. 8, Ch. 57, L. 1911; re-en. Sec. 5373, R.C.M. 1921; re-en. Sec. 5372, R.C.M. 1935; R.C.M. 1947, 11-3108(part).

7-3-4205. City to be governed by mayor and councilmen. Every city shall be governed by a mayor and councilmen, as provided in 7-3-4215, each of whom shall have the right to vote on all questions coming before the council.

History: En. Sec. 15, Ch. 57, L. 1911; re-en. Sec. 5380, R.C.M. 1921; re-en. Sec. 5380, R.C.M. 1935; R.C.M. 1947, 11-3117.

7-3-4206. Territorial limits and property. The territorial limits of such city shall remain the same as under the former organization, and all rights and property of every description which were vested in any such city under its former organization shall vest in the same under the organization herein contemplated, and no right or liability either in favor of or against it existing at the time and no suit or prosecution of any kind shall be affected by such change unless otherwise provided for in this part.

History: En. Sec. 8, Ch. 57, L. 1911; re-en. Sec. 5373, R.C.M. 1921; re-en. Sec. 5372, R.C.M. 1935; R.C.M. 1947, 11-3108(part).

7-3-4207. Requirements of petitions. Petitions provided for in this part shall be signed by none but legal voters of the city. Each petition shall contain, in addition to the names of the petitioners, the street and house number in which the petitioner resides and his length of residence in the city. It shall also be accompanied by the affidavit of one or more legal voters of the city stating that the signers thereof were, at the time of signing, legal voters of said city and the number of signers at the time the affidavit was made.

History: En. Sec. 33, Ch. 57, L. 1911; re-en. Sec. 5398, R.C.M. 1921; re-en. Sec. 5398, R.C.M. 1935; amd. Sec. 2, Ch. 105, L. 1951; R.C.M. 1947, 11-3136.

Cross-References

Petitions — general requirements, 7-1-4130.

7-3-4208. Petition to organize under commission form — election required. (1) When a petition on the question of reorganization under this part is filed with the city council and is signed by not less than 25% of the qualified electors of the city registered for the last preceding general city election, the city council shall order a special election to be held in conjunction with the next regular or primary election. At this election, the question of reorganization of the city under the provisions of this part must be submitted to the qualified electors of the city.

(2) The order of the city council must specify the time when the election will be held.

History: **En. Sec. 2, Ch. 57, L. 1911; amd. Sec. 1, Ch. 2, L. 1915; re-en. Sec. 5367, R.C.M. 1921; re-en. Sec. 5367, R.C.M. 1935; R.C.M. 1947, 11-3102; amd. Sec. 8, Ch. 250, L. 1985; amd. Sec. 17, Ch. 387, L. 1995.**

Compiler's Comments

1995 Amendment: Chapter 387 in (1), near beginning of first sentence after "petition", inserted "on the question of reorganization under this part", near middle, after "election", deleted "praying that the question of reorganization under this part be submitted to the qualified electors of such city", after "shall" deleted "thereupon and within 30 days thereafter", and at end inserted "in conjunction with the next regular or primary election"; in (2), after "held", deleted "which must be no less than 75 or more than 90 days from the date of the city council order"; and made minor changes in style.

7-3-4209. Proclamation and notice of election. Upon the city council ordering such special election to be held, the mayor of such city shall issue a proclamation setting forth the purpose for which such special election is called and the date of holding such special election. The proclamation shall be published for 10 consecutive days in each daily newspaper published in said city if there be such; otherwise, once a week for 2 consecutive weeks in each weekly newspaper published therein; and such proclamation shall also be posted in at least five public places within such city.

History: **En. Sec. 3, Ch. 57, L. 1911; re-en. Sec. 5368, R.C.M. 1921; re-en. Sec. 5368, R.C.M. 1935; R.C.M. 1947, 11-3103.**

7-3-4210. Form of ballot. At such election the ballots to be used shall be printed upon plain white paper and shall be headed "Special election for the purpose of submitting to the qualified electors of the city of .... the question of reorganization of the city of .... under Chapter 57, Laws of 1911" and shall be substantially in the following form:

☐ FOR reorganization of the city of .... under chapter 57, Laws of 1911.

☐ AGAINST reorganization of the city of .... under chapter 57, Laws of 1911.

History: **En. Sec. 4, Ch. 57, L. 1911; re-en. Sec. 5369, R.C.M. 1921; re-en. Sec. 5369, R.C.M. 1935; R.C.M. 1947, 11-3104(part).**

7-3-4211. Conduct of election. Such election shall be conducted and vote canvassed and result declared in the same manner as provided by law in respect to other city elections.

History: **En. Sec. 4, Ch. 57, L. 1911; re-en. Sec. 5369, R.C.M. 1921; re-en. Sec. 5369, R.C.M. 1935; R.C.M. 1947, 11-3104(part).**

Cross-References

Elections, Title 13.

7-3-4212. Effect of vote on question. (1) If such proposition is adopted, the mayor shall transmit to the governor, to the secretary of state, and to the county clerk and recorder each a certificate stating that such proposition was adopted.

(2) If such proposition shall not be adopted at such special election, such proposition shall not again be submitted to the electors of such city within a period of 2 years thereafter.

History: **En. Sec. 5, Ch. 57, L. 1911; re-en. Sec. 5370, R.C.M. 1921; re-en. Sec. 5370, R.C.M. 1935; R.C.M. 1947, 11-3105.**

7-3-4213. Election for first city officers. (1) If a majority of the votes cast at the election is in favor of reorganization, the city council shall, at its first regular meeting held after the election, order a special election to be held for the purpose of electing a mayor and the number of councilmen to which the city is entitled. The order must specify the time of holding the election, which must be held in conjunction with a regular or primary election. The mayor shall issue a proclamation setting forth the purposes for which the special election is called and the day of holding the election. The proclamation must be published for 10 successive days in each daily newspaper published in the city if there is a daily newspaper or once a week for 2 consecutive weeks in each weekly newspaper published in the city. A copy of the proclamation must be posted at each voting place within the city and in at least 10 of the most public places in the city.

(2) The election must be conducted, the vote must be canvassed, and the result must be declared in the same manner as provided by law in respect to other city elections.

History: **(1)En. Sec. 6, Ch. 57, L. 1911; amd. Sec. 2, Ch. 2, L. 1915; re-en. Sec. 5371, R.C.M. 1921; re-en. Sec. 5371, R.C.M. 1935; Sec. 11-3106, R.C.M. 1947; (2)En. Sec. 7, Ch. 57, L. 1911; re-en. Sec. 5372, R.C.M. 1921; re-en. Sec. 5372, R.C.M. 1935; Sec. 11-3107, R.C.M. 1947; R.C.M. 1947, 11-3106, 11-3107; amd. Sec. 9, Ch. 250, L. 1985; amd. Sec. 18, Ch. 387, L. 1995.**

Compiler's Comments

1995 Amendment: Chapter 387 in (1), near beginning of first sentence after "favor of", substituted "reorganization" for "such proposition" and in second sentence, after "be", substituted "held in conjunction with a regular or primary election" for "no less than 75 and no more than 90 days after the making of said order, and"; and made minor changes in style.

7-3-4214. First term of office. (1) The mayor and councilmen elected at such special election shall qualify and their terms of office shall begin on the first Monday after their election. The terms of office of the mayor and councilmen or aldermen in such city in office at the beginning of the term of office of the councilmen first elected under the provisions of this part shall then cease and determine, and the terms of office of all their appointed officers in force in such city, except as hereinafter provided, shall cease and determine as soon as the council shall by resolution declare.

(2) The terms of office of the mayor and all councilmen elected at such special election shall expire on the first Monday in January of the first even-numbered year following their election. At the first regular city election held in the year prior to the year in which the terms of office of the mayor and councilmen elected at such special election shall expire, a mayor and two councilmen shall be elected in cities having a population of less than 25,000. The mayor elected at such first general city election shall hold office for 4 years, one of the councilmen elected at such first city election shall hold office for 2 years, and the other of such councilmen elected at such first general city

election shall hold office for 4 years, beginning with the first Monday in January of the year following their election. A mayor and four councilmen shall be elected in cities having a population of 25,000 or more, and the mayor elected at such first general city election shall hold office for 4 years. Two of the councilmen elected at such first general city election shall hold office for 2 years, and the other two of the councilmen elected at such first general city election shall hold office for 4 years, beginning with the first Monday in January of the year following their election.

(3) The councilmen elected at the first general city election shall decide by lot, in such manner as they may select, which thereof shall hold the office of councilman the term of which expires 2 years thereafter and which thereof shall hold the office of councilman the term of which expires 4 years thereafter.

History: En. Secs. 10, 11, Ch. 57, L. 1911; re-en. Secs. 5375, 5376, R.C.M. 1921; re-en. Secs. 5375, 5376, R.C.M. 1935; R.C.M. 1947; 11-3110, 11-3111(part); amd. Sec. 386, Ch. 571, L. 1979.

7-3-4215. Councilmen and mayor to be elected. (1) In every city of the third class, there shall be a mayor and two councilmen. In every city of the second class, there shall be a mayor and two councilmen. In every city of the first class having a population of less than 25,000, there shall be a mayor and two councilmen. In every city of the first class having a population of 25,000 or more, there shall be a mayor and four councilmen.

(2) The mayor and all councilmen shall be elected at large.

History: En. Sec. 9, Ch. 57, L. 1911; re-en. Sec. 5374, R.C.M. 1921; re-en. Sec. 5374, R.C.M. 1935; amd. Sec. 1, Ch. 18, L. 1945; R.C.M. 1947, 11-3109(part).

7-3-4216. General term of office. The terms of office of the mayor and all councilmen elected after the first term shall be 2 years.

History: En. Sec. 11, Ch. 57, L. 1911; re-en. Sec. 5376, R.C.M. 1921; re-en. Sec. 5376, R.C.M. 1935; R.C.M. 1947, 11-3111(part).

7-3-4217. Oath of office and official bond. Every person who has been declared elected mayor or councilman shall, within 10 days thereafter, take and file with the city clerk an oath of office in the form and manner provided by law and shall execute and give sufficient bond to the municipal corporation in the sum of $10,000, conditioned for the faithful performance of the duties of the office. This bond shall be approved by the judge of the district court of the county in which such city is situated and filed with the clerk and recorder of the county in which such city is situated.

History: En. Sec. 12, Ch. 57, L. 1911; re-en. Sec. 5377, R.C.M. 1921; re-en. Sec. 5377, R.C.M. 1935; amd. Sec. 8, Ch. 535, L. 1975; R.C.M. 1947, 11-3112(9).

Cross-References

Oath of office, Art. III, sec. 3, Mont. Const.

Official bonds, Title 2, ch. 9, part 8.

7-3-4218. Vacancies. (1) Vacancies in the office of mayor or councilmen shall be filled by appointment made by a majority vote of the remaining members of the council. If in filling such vacancy a tie vote should occur, then the person to fill said vacancy shall be determined by lot in such manner as said council may provide.

(2) A person appointed to fill any such vacancy shall hold his office until the next general election and until his successor is elected and qualified. A person elected to fill a vacancy shall hold office until the expiration of the term for which the person he succeeds was elected.

History: En. Sec. 9, Ch. 57, L. 1911; re-en. Sec. 5374, R.C.M. 1921; re-en. Sec. 5374, R.C.M. 1935; amd. Sec. 1, Ch. 18, L. 1945; R.C.M. 1947, 11-3109(part).

7-3-4219. Council offices. The council shall have its office at the city hall.

History: En. Sec. 21, Ch. 57, L. 1911; re-en. Sec. 5386, R.C.M. 1921; re-en. Sec. 5386, R.C.M. 1935; amd. Sec. 1, Ch. 75, L. 1945; amd. Sec. 1, Ch. 189, L. 1949; amd. Sec. 1, Ch. 87, L. 1951; R.C.M. 1947, 11-3123(part).

7-3-4220. Council meetings. (1) Regular meetings of the council shall be held on the first Monday after the election of councilmen and thereafter at least once each month. The council shall provide by ordinance for the time for holding regular meetings, and special meetings may be called from time to time by the mayor or two councilmen.

(2) All meetings of the council, whether regular or special, at which any person not a city officer is admitted shall be open to the public.

History: En. Sec. 22, Ch. 57, L. 1911; re-en. Sec. 5387, R.C.M. 1921; re-en. Sec. 5387, R.C.M. 1935; R.C.M. 1947, 11-3125(part).

Cross-References

Open meetings, Art. II, sec. 9, Mont. Const.;
Title 2, ch. 3, part 2.

7-3-4221. Conduct of business. (1) (a) In cities having a mayor and two councilmen, the mayor and one councilman or two councilmen shall constitute a quorum and the affirmative vote of the mayor and one councilman or the affirmative vote of two councilmen shall be necessary to adopt or reject any motion, resolution, or ordinance or pass any measure unless a greater number is provided for in this part.

(b) In cities having a mayor and four councilmen, the mayor and two councilmen or three councilmen shall constitute a quorum and the affirmative vote of the mayor and two councilmen or the affirmative vote of three councilmen shall be necessary to adopt or reject any motion, resolution, or ordinance or pass any measure unless a greater number is provided for in this part.

(2) Upon every vote the ayes and nays shall be called and recorded. Every motion, resolution, or ordinance shall be reduced to writing and read before the vote is taken thereon. Every resolution or ordinance passed by the council must be signed by the mayor or by two councilmen and must be recorded before the same shall be in force.

(3) The mayor shall be president of the council and shall preside at its meetings and shall supervise all departments of the city and report and recommend to the council for its action all matters requiring attention in any department. The council shall, at its first regular meeting, select one of its members for vice-president of the council, and in case of a vacancy in the office of mayor or the absence or inability of the mayor, he shall perform the duties of the mayor.

History: (1), (2)Ap. p. Sec. 16, Ch. 57, L. 1911; re-en. Sec. 5381, R.C.M. 1921; re-en. Sec. 5381, R.C.M. 1935; Sec. 11-3118, R.C.M. 1947; Ap. p. Sec. 17, Ch. 57, L. 1911; re-en. Sec. 5382, R.C.M. 1921; re-en. Sec. 5382, R.C.M. 1935; Sec. 11-3119, R.C.M. 1947; (3)En. Sec. 22, Ch. 57, L. 1911; re-en. Sec. 5387, R.C.M. 1921; re-en. Sec. 5387, R.C.M. 1935; Sec. 11-3125, R.C.M. 1947; R.C.M. 1947, 11-3118, 11-3119(part), 11-3125(part).

7-3-4222. Adoption of ordinances. (1) Each ordinance or resolution appropriating money, ordering any street or sewer improvement, making or authorizing the making of any contract, or granting any franchise or right to occupy or use the streets, highways, bridges, or public places in the city for any purpose must be complete in the form in which it is finally passed and remain on file with the city clerk for public inspection at least 1 week before the final passage or adoption of the ordinance or resolution.

(2) An ordinance passed by the council, except when otherwise required by the general laws of this state or the provisions of this part and except an ordinance for the immediate preservation of the public peace, health, or safety that contains a statement of its urgency and is passed by a two-thirds vote of the council, may not go into effect before 10 days from the time of its final passage. If during the 10-day period a petition signed by electors of the city equal in number to at least 25% of the entire number of persons registered to vote at the last preceding general municipal election, protesting against the passage of the ordinance, is presented to the council, the ordinance is suspended from going into operation and the council shall reconsider the ordinance. If the ordinance is not entirely repealed, the council shall submit the ordinance to the vote of the electors of the city, either at a general election or at a special municipal election held in conjunction with a regular or primary election. The ordinance may not go into effect or become operative unless a majority of the electors voting on the ordinance vote in favor of its adoption.

History: En. Secs. 23, 31, Ch. 57, L. 1911; re-en. Secs. 5388, 5396, R.C.M. 1921; re-en. Secs. 5388, 5396, R.C.M. 1935; R.C.M. 1947, 11-3126(part), 11-3134; amd. Sec. 38, Ch. 575, L. 1981; amd. Sec. 19, Ch. 387, L. 1995.

Compiler's Comments

1995 Amendment: Chapter 387 in (2), at end of third sentence after "municipal", substituted "election held in conjunction with a regular or primary election" for "election to be called for that purpose"; and made minor changes in style.

Cross-References

Ordinances — general provisions, Title 7, ch. 5, part 1.

7-3-4223. Granting of franchises. A franchise or right to occupy or use the streets, highways, bridges, or public places in a city may not be granted, renewed, or extended except by ordinance. A franchise or grant for interurban or street railways, gasworks or waterworks, electric light or power plants, heating plants, telegraph or telephone systems, or other public service utilities or renewal or extension of the franchise or grant within the city must be authorized or approved by a majority of the electors voting on the issue at a general election or a special election held in conjunction with a regular or primary election as provided in 7-5-4321 and 7-5-4322.

History: En. Sec. 23, Ch. 57, L. 1911; re-en. Sec. 5388, R.C.M. 1921; re-en. Sec. 5388, R.C.M. 1935; R.C.M. 1947, 11-3126(part); amd. Sec. 20, Ch. 387, L. 1995.

Compiler's Comments

1995 Amendment: Chapter 387 near end, after "special election", inserted "held in conjunction with a regular or primary election"; and made minor changes in style.

Cross-References

Franchises — general provisions, 7-5-4321, 7-5-4322.

7-3-4224. Repealed. Sec. 407, Ch. 571, L. 1979.

History: En. Sec. 30, Ch. 57, L. 1911; re-en. Sec. 5395, R.C.M. 1921; re-en. Sec. 5395, R.C.M. 1935; R.C.M. 1947, 11-3133(part).

7-3-4225. Repealed. Sec. 407, Ch. 571, L. 1979.

History: En. Sec. 30, Ch. 57, L. 1911; re-en. Sec. 5395, R.C.M. 1921; re-en. Sec. 5395, R.C.M. 1935; R.C.M. 1947, 11-3133(part).

7-3-4226. Repealed. Sec. 407, Ch. 571, L. 1979.

History: **En. Sec. 30, Ch. 57, L. 1911; re-en. Sec. 5395, R.C.M. 1921; re-en. Sec. 5395, R.C.M. 1935; R.C.M. 1947, 11-3133(part).**

7-3-4227. Abandonment of commission form. (1) Any city which has operated for more than 1 year under the provisions of this part may abandon such organization and accept the provisions of the general law of the state applicable to cities of its population.

(2) Upon the petition of not less than 10% of the electors of the city registered for the preceding general election, the following proposition shall be placed upon the ballot at the next regular city election, provided the petition is filed at least 75 days prior to the date of the election:

"Shall the city of (name of city) abandon its organization under chapter 57 of the acts of the twelfth legislative assembly and become a city under the general law governing cities of like population or, if formerly organized under special charter, resume the special charter?"

(3) If the majority of the votes cast at such election is in favor of such proposition, the officers elected at the next succeeding biennial election shall be those then prescribed by the general law of the state for cities of like population, and upon the qualification of these officers, the city shall become a city under the general law of the state, but this change may not in any manner or degree affect the property, rights, or liabilities of any nature of the city but shall merely extend to each change in its form of government.

(4) Whenever the form of government of any city is determined by a vote of the people under the provision of this section, the same question may not be submitted again for a period of 2 years, and any ordinance adopted by a vote of the people shall not be repealed or the same question submitted for a period of 2 years.

History: **En. Sec. 32, Ch. 57, L. 1911; amd. Sec. 1, Ch. 128, L. 1913; re-en. Sec. 5397, R.C.M. 1921; re-en. Sec. 5397, R.C.M. 1935; amd. Sec. 1, Ch. 105, L. 1951; R.C.M. 1947, 11-3135; amd. Sec. 20, Ch. 262, L. 1979; amd. Sec. 10, Ch. 250, L. 1985.**

Cross-References

Elections, Title 13.

7-3-4228 through 7-3-4230 reserved.

7-3-4231. General provisions related to elections. (1) All electors of cities under this part who, by ordinances governing cities incorporated under the general municipal incorporation law or by charter, would be entitled to vote for the election of officers at any general municipal election in such cities shall be qualified to vote at all elections under this part.

(2) The ballots to be used at such general municipal election shall be in the same general form as for such primary elections so far as applicable; and in all elections in such cities the election precincts, voting places, method of conducting the elections, canvassing of votes, and announcing the results shall be the same as provided by law for the election of officers in such cities so far as the same are applicable and not inconsistent with the provisions of this part.

History: **En. Sec. 12, Ch. 57, L. 1911; re-en. Sec. 5377, R.C.M. 1921; re-en. Sec. 5377, R.C.M. 1935; amd. Sec. 8, Ch. 535, L. 1975; R.C.M. 1947, 11-3112(8).**

7-3-4232 through 7-3-4241. Repealed. Sec. 407, Ch. 571, L. 1979.

Compiler's Comments

Histories of Repealed Sections: **7-3-4232.** En. Sec. 12, Ch. 57, L. 1911; re-en. Sec. 5377, R.C.M. 1921; re-en. Sec. 5377, R.C.M. 1935; amd. Sec. 8, Ch. 535, L. 1975; R.C.M. 1947, 11-3112(1).

7-3-4233. En. Sec. 12, Ch. 57, L. 1911; re-en. Sec. 5377, R.C.M. 1921; re-en. Sec. 5377, R.C.M. 1935; amd. Sec. 8, Ch. 535, L. 1975; R.C.M. 1947, 11-3112(2) thru (4).

7-3-4234. En. Sec. 1, Ch. 137, L. 1933; re-en. Sec. 5378.1, R.C.M. 1935; R.C.M. 1947, 11-3115.

7-3-4235. En. Sec. 12, Ch. 57, L. 1911; re-en. Sec. 5377, R.C.M. 1921; re-en. Sec. 5377, R.C.M. 1935; amd. Sec. 8, Ch. 535, L. 1975; R.C.M. 1947, 11-3112(part).

7-3-4236. En. Sec. 12, Ch. 57, L. 1911; re-en. Sec. 5377, R.C.M. 1921; re-en. Sec. 5377, R.C.M. 1935; amd. Sec. 8, Ch. 535, L. 1975; R.C.M. 1947, 11-3112(part).

7-3-4237. En. Sec. 12, Ch. 57, L. 1911; re-en. Sec. 5377, R.C.M. 1921; re-en. Sec. 5377, R.C.M. 1935; amd. Sec. 8, Ch. 535, L. 1975; R.C.M. 1947, 11-3112(part).

7-3-4238. En. Sec. 12, Ch. 57, L. 1911; re-en. Sec. 5377, R.C.M. 1921; re-en. Sec. 5377, R.C.M. 1935; amd. Sec. 8, Ch. 535, L. 1975; R.C.M. 1947, 11-3112(7).

7-3-4239. En. Sec. 1, Ch. 13, L. 1933; re-en. Sec. 5377.1, R.C.M. 1935; R.C.M. 1947, 11-3113.

7-3-4240. En. Sec. 13, Ch. 57, L. 1911; re-en. Sec. 5378, R.C.M. 1921; re-en. Sec. 5378, R.C.M. 1935; R.C.M. 1947, 11-3114.

7-3-4241. En. Sec. 14, Ch. 57, L. 1911; re-en. Sec. 5379, R.C.M. 1921; re-en. Sec. 5379, R.C.M. 1935; amd. Sec. 1, Ch. 166, L. 1971; R.C.M. 1947, 11-3116.

7-3-4242 through 7-3-4250 reserved.

7-3-4251. Powers of mayor. The mayor shall:
(1) preside at all meetings of the council;
(2) have the same power to vote as other members of the council; and
(3) have no power to veto any measure.

History: En. Sec. 17, Ch. 57, L. 1911; re-en. Sec. 5382, R.C.M. 1921; re-en. Sec. 5382, R.C.M. 1935; R.C.M. 1947, 11-3119(part).

7-3-4252. Powers of council. The council has and shall exercise all executive, legislative, and judicial powers and duties possessed and exercised by the mayor, city council, board of public works, park commissioners, board of police and fire commissioners, board of waterworks trustees, board of library trustees, attorney, treasurer, auditor, city engineer, and other executive and administrative offices in cities organized under the general municipal incorporation laws.

History: En. Sec. 18, Ch. 57, L. 1911; re-en. Sec. 5383, R.C.M. 1921; re-en. Sec. 5383, R.C.M. 1935; R.C.M. 1947, 11-3120(part); amd. Sec. 6, Ch. 27, Sp. L. November 1993.

7-3-4253. Department structure and operation. (1) The executive and administrative powers, authority, and duties in such cities shall be distributed into and among departments as follows:
(a) in cities having a mayor and two councilmen, into three departments:
(i) a department of accounts, finance, and public property;
(ii) a department of public safety and charity;
(iii) a department of streets, public improvements, and parks;
(b) in cities having a mayor and four councilmen, into five departments:
(i) a department of public affairs;
(ii) a department of accounts and finance;
(iii) a department of public safety and charity;
(iv) a department of street and public improvements;
(v) a department of parks and public property.

(2) The council shall determine the powers and duties to be performed by each department of the city, shall prescribe the powers and duties of officers and employees, may assign particular officers and employees to one or more of the departments, may require an officer or employee to perform duties in two

or more departments, and may make such rules as may be necessary or proper for the efficient and economical conduct of the business of the city.

History: **En. Sec. 18, Ch. 57, L. 1911; re-en. Sec. 5383, R.C.M. 1921; re-en. Sec. 5383, R.C.M. 1935; R.C.M. 1947, 11-3120(part).**

7-3-4254. Selection and supervision of officers and employees. (1) In cities having a mayor and two councilmen, the mayor shall be superintendent of the department of accounts, finance, and public property, and in cities having a mayor and four aldermen, the mayor shall be superintendent over the department of public affairs, and the mayor shall have general supervision over all departments of the city and over all matters connected with said city, and the council shall, at its first regular meeting after the election of its members, designate by majority vote one councilman to be superintendent over each department of the city, but such designation may be changed whenever it appears that the public service would be benefited thereby.

(2) The council shall, at its first regular meeting after the election of its members or as soon thereafter as practicable, elect by majority vote the following officers: a city clerk, a city treasurer, a city attorney, a city auditor, a city engineer, a city physician, a chief of the fire department, a chief of the police department, a commissioner of weights and measures, a street commissioner, library trustees, cemetery trustees, and such other officers and assistants as shall be provided for by ordinance and which may be necessary to the proper and efficient conduct of the affairs of the city. The council may by ordinance consolidate any of the offices the election to which is made by the council and may require any officer elected by the council to perform the duties of any other officer and shall appoint a city judge with the authority now conferred by existing laws. The tenure in office of a chief of the fire department and other officers of the fire department shall be governed by the provisions of 7-33-4106 and 7-33-4122 through 7-33-4124. Any officer or assistant elected or appointed by the council may be removed from office at any time by a majority vote of the members of the council, except as otherwise provided in this part.

(3) The council shall have power from time to time to create, fill, and discontinue offices and employment other than herein prescribed, according to their judgment of the needs of the city, and by majority vote of all the members to remove any such officer or employee, except as otherwise provided for in this part, and may by resolution or otherwise prescribe, limit, or change the compensation of such officers or employees.

History: **(1), (2)En. Sec. 19, Ch. 57, L. 1911; re-en. Sec. 5384, R.C.M. 1921; re-en. Sec. 5384, R.C.M. 1935; amd. Sec. 1, Ch. 73, L. 1943; Sec. 11-3121, R.C.M. 1947; (3)En. Sec. 20, Ch. 57, L. 1911; re-en. Sec. 5385, R.C.M. 1921; re-en. Sec. 5385, R.C.M. 1935; Sec. 11-3122, R.C.M. 1947; R.C.M. 1947, 11-3121, 11-3122.**

Cross-References

City Judges — City Court, Title 3, ch. 11.

7-3-4255. Compensation of mayor, council members, and employees. (1) The total compensation of councilmen shall be as follows:

(a) In cities of the third class having a population of less than 3,000, the annual salary of the mayor shall not exceed $600 and the annual salary of each councilman shall not exceed $500. In cities of the third class having a population of 3,000 or more, the annual salary of the mayor shall not exceed $1,000 and the annual salary of each councilman shall not exceed $900.

(b) In cities of the second class, the annual salary of the mayor shall not exceed $1,650 and the annual salary of each councilman shall not exceed $1,500.

(c) In cities of the first class having a population of less than 30,000, the annual salary of the mayor shall not exceed $4,500 and the annual salary of each councilman shall not exceed $3,800. In cities of the first class having a population of 30,000 and over, the annual salary of the mayor shall not exceed $4,800 and the annual salary of each councilman shall not exceed $4,000.

(2) Any increase in salary occasioned by the advance in class or increase in population of any city shall commence with the month next after the publication of the census showing such advance in class or increase in population.

(3) Every other officer or assistant shall receive such salary or compensation as the council shall by ordinance from time to time provide, payable in equal monthly installments.

(4) The salary or compensation of all other employees of such city shall be fixed by the council and shall be payable monthly or at such shorter periods as the council shall determine.

History: En. Sec. 21, Ch. 57, L. 1911; re-en. Sec. 5386, R.C.M. 1921; re-en. Sec. 5386, R.C.M. 1935; amd. Sec. 1, Ch. 75, L. 1945; amd. Sec. 1, Ch. 189, L. 1949; amd. Sec. 1, Ch. 87, L. 1951; R.C.M. 1947, 11-3123(part).

7-3-4256. Control of conflict of interest. (1) No officer or employee elected or appointed in any such city shall be interested, directly or indirectly, in any contract or job for work or materials or the profits thereof or materials, supplies, or services to be furnished or performed for the city. No such officer or employee shall be interested, directly or indirectly, in any contract or job for work or materials or the profits thereof or services to be furnished or performed for any person, firm, or corporation operating interurban railway, street railway, gasworks, waterworks, electric light or power plant, heating plant, telegraph line, telephone exchange, or other public utility within the territorial limits of said city. No such officer or employee shall accept or receive, directly or indirectly, from any person, firm, or corporation operating within the territorial limits of said city any interurban railway, street railway, gasworks, waterworks, electric light or power plant, heating plant, telegraph line, or telephone exchange, or other business using or operating under a public franchise any frank, free pass, free ticket, or free service or accept or receive, directly or indirectly, from any such person, firm, or corporation any other service upon terms more favorable than is granted to the public generally. Such prohibition of free transportation shall not apply to policemen or firefighters in uniform, nor shall any free service to the city officials heretofore provided by any franchise or ordinance be affected by this section. Any officer or employee of such city who, by solicitation or otherwise, shall exert his influence, directly or indirectly, to influence other officers or employees of such city to adopt his political views or to favor any particular person or candidate for office or who shall in any manner contribute money, labor, or other valuable thing to any person for election purposes shall be guilty of a misdemeanor and upon conviction shall be punished by a fine not exceeding $300 or by imprisonment in the county jail not exceeding 30 days.

(2) Any violation of the provisions of this section shall be a misdemeanor, and every such contract and agreement shall be void.

History: En. Sec. 24, Ch. 57, L. 1911; re-en. Sec. 5389, R.C.M. 1921; re-en. Sec. 5389, R.C.M. 1935; amd. Sec. 3, Ch. 489, L. 1977; R.C.M. 1947, 11-3127.

Cross-References

Standards of conduct, Title 2, ch. 2.

Misdemeanors, 46-18-212.

Reduced rate or free transportation on common carriers, 69-11-208.

7-3-4257. Appointment of civil service commission. (1) Immediately after organizing, the council shall by ordinance appoint three civil service commissioners, who shall hold office, one until the first Monday in April in the second year, one until the first Monday in April of the fourth year, and one until the first Monday in April of the sixth year after his appointment. Each succeeding council shall, as soon as practicable after organizing, appoint one commissioner for 6 years, who shall take the place of a commissioner whose term of office expires. The chairman of the commission for each biennial period shall be the member whose term first expires. No person while on the said commission shall hold or be a candidate for any office of public trust. Two of said members shall constitute a quorum to transact business. The commissioners must be citizens of Montana and residents of the city for more than 3 years next preceding their appointment.

(2) Before entering upon the duties of his office, each of said commissioners shall take and subscribe an oath, which shall be filed and kept in the office of the city clerk, to support the constitution of the United States and of the state of Montana, to obey the laws, to aid to secure and maintain an honest and efficient force free from partisan distinction or control, and to perform the duties of his office to the best of his ability.

(3) The council may remove any of said commissioners during their term of office for cause, a majority of councilmen voting in favor of such removal, and shall fill any vacancy that shall occur in said commission for the unexpired term. The city council shall provide suitable rooms in which the said civil service commission shall hold its meetings; it shall have a clerk, who shall keep a record of all its meetings, such city to supply the said commission with all necessary equipment to properly attend to such business.

History: En. Sec. 25, Ch. 57, L. 1911; re-en. Sec. 5390, R.C.M. 1921; re-en. Sec. 5390, R.C.M. 1935; R.C.M. 1947, 11-3128(1) thru (3).

Cross-References

Oath of office, Art. III, sec. 3, Mont. Const.

7-3-4258. Civil service examinations. Said commission shall, on the first Monday of April and October of each year or more often if it shall be deemed necessary, under such rules as may be prescribed by the council, hold examinations for the purpose of determining the qualifications of applicants for positions, which examination shall be practical and shall fairly test the fitness of the persons examined to discharge the duties of the position to which they seek to be appointed. Such commission shall, as soon as possible after such examination, certify to the council double the number of persons necessary to fill vacancies, who according to the records have the highest standing for the position they seek to fill as a result of such examination, and all vacancies which occur that come under the civil service prior to the date of the next regular examination shall be filled from said list so certified; provided, however, that should the list for any cause be reduced to less than three for any division, then the council or the head of the proper department may temporarily fill a vacancy, but not to exceed 30 days.

History: **En. Sec. 25, Ch. 57, L. 1911; re-en. Sec. 5390, R.C.M. 1921; re-en. Sec. 5390, R.C.M. 1935; R.C.M. 1947, 11-3128(4).**

Cross-References

Veterans' public employment preference, Title 39, ch. 29.

Handicapped persons' public employment preference, Title 39, ch. 30.

7-3-4259. Discharge of employees. All persons subject to such civil service examination shall be subject to removal from office or employment by the council for misconduct or failure to perform their duties under such rules as it may adopt, and the chief of police, chief of the fire department, or any superintendent or foreman in charge of municipal work may peremptorily suspend or discharge any subordinate then under his direction for neglect of duty or disobedience of his orders but shall, within 24 hours thereafter, report such suspension or discharge and the reason therefor to the superintendent of his department, who shall thereupon affirm or revoke such discharge or suspension according to the facts. Such employee (or the officer discharging or suspending him) may, within 5 days of such ruling, appeal therefrom to the council, which shall fully hear and determine the matter.

History: **En. Sec. 25, Ch. 57, L. 1911; re-en. Sec. 5390, R.C.M. 1921; re-en. Sec. 5390, R.C.M. 1935; R.C.M. 1947, 11-3128(5).**

7-3-4260. Investigatory powers of council. The council shall have the power to enforce the attendance of witnesses and the production of books and papers and the power to administer oaths in the same manner and with like effect and under the same penalties as in the case of magistrates exercising criminal or civil jurisdiction under the statutes of Montana.

History: **En. Sec. 25, Ch. 57, L. 1911; re-en. Sec. 5390, R.C.M. 1921; re-en. Sec. 5390, R.C.M. 1935; R.C.M. 1947, 11-3128(6).**

Cross-References

Subpoenas and witnesses, Title 26, ch. 2.

7-3-4261. Conduct of civil service commission business. Said commissioners shall make an annual report to the council, and it may require a special report from said commissioners at any time. Said council may prescribe such rules for the proper conduct of the business of the commission as shall be found expedient and advisable, including restrictions on appointment, promotions, removals for cause, roster of employees, certificates of records to the auditors, and payment to persons improperly employed.

History: **En. Sec. 25, Ch. 57, L. 1911; re-en. Sec. 5390, R.C.M. 1921; re-en. Sec. 5390, R.C.M. 1935; R.C.M. 1947, 11-3128(7).**

7-3-4262. Nonpartisan appointments and elections. All officers and employees in any said city shall be elected or appointed with reference to their qualifications and fitness and for the good of the public service and without reference to their political faith or party affiliations.

History: **En. Sec. 25, Ch. 57, L. 1911; re-en. Sec. 5390, R.C.M. 1921; re-en. Sec. 5390, R.C.M. 1935; R.C.M. 1947, 11-3128(10).**

Cross-References

Nonpartisan elections, Title 13, ch. 14.

7-3-4263. Repealed. Sec. 407, Ch. 571, L. 1979.

History: En. Sec. 25, Ch. 57, L. 1911; re-en. Sec. 5390, R.C.M. 1921; re-en. Sec. 5390, R.C.M. 1935; R.C.M. 1947, 11-3128(part).

7-3-4264. Applicability of civil service provisions. The provisions of 7-3-4257 through 7-3-4262, 7-3-4264, and 7-3-4265 shall apply to all appointive officers and employees of such city except those especially named in 7-3-4254, commissioners of any kind, laborers whose occupation requires no special skill or fitness, election officials, and mayor's secretary and assistant attorney, where such officers are appointed.

History: En. Sec. 25, Ch. 57, L. 1911; re-en. Sec. 5390, R.C.M. 1921; re-en. Sec. 5390, R.C.M. 1935; R.C.M. 1947, 11-3128(9); amd. Sec. 8, Ch. 370, L. 1987.

7-3-4265. Violations of civil service provisions. (1) The council of such city shall have power to pass ordinances imposing suitable penalties for the punishment of persons violating any of the provisions of this part relating to the civil service commission.

(2) It shall be unlawful for any candidate for office in any such city, directly or indirectly, to give or promise any person or persons any office, position, employment, benefit, or anything of value for the purpose of influencing or obtaining the political support, aid, or vote of any person or persons.

(3) Any violation of the provisions of 7-3-4257 through 7-3-4262, 7-3-4264, or this section shall be a misdemeanor and give grounds for removal from office.

History: En. Sec. 25, Ch. 57, L. 1911; re-en. Sec. 5390, R.C.M. 1921; re-en. Sec. 5390, R.C.M. 1935; R.C.M. 1947, 11-3128(part); amd. Sec. 9, Ch. 370, L. 1987.

Cross-References

Official misconduct, 45-7-401.

Misdemeanors, 46-18-212.

7-3-4266. Report of proceedings and financial statement. The council shall monthly print in pamphlet form a detailed itemized statement of all of the receipts and expenses of the city and a summary of its proceedings during the preceding month and furnish printed copies of the statement to the state library, the city library, the daily newspaper of the city, and persons who apply for the statement at the office of the city clerk.

History: En. Sec. 26, Ch. 57, L. 1911; re-en. Sec. 5391, R.C.M. 1921; re-en. Sec. 5391, R.C.M. 1935; amd. Sec. 1, Ch. 52, L. 1943; amd. Sec. 55, Ch. 348, L. 1974; R.C.M. 1947, 11-3129.

7-3-4267. Revision of appropriations made by former council. If, at the beginning of the term of office of the first council elected in such city under the provisions of this part, the appropriations for the expenditures of the city government for the current fiscal year have been made, said council shall have power, by ordinance, to revise, repeal, or change said appropriations and to make additional appropriations.

History: En. Sec. 27, Ch. 57, L. 1911; re-en. Sec. 5392, R.C.M. 1921; re-en. Sec. 5392, R.C.M. 1935; R.C.M. 1947, 11-3130.

Part 43

Municipal Commission-Manager Government

Part Cross-References

Alternative forms law — commission-manager form of government, Title 7, ch. 3, part 3.

Restriction on local government regulation of firearms, 45-8-351.

7-3-4301. Authorization for commission-manager form of municipal government. (1) Any municipality may abandon its organization and reorganize under the provisions of this part and part 44 by proceeding as hereinafter provided.

(2) The form of government provided for in this part and part 44 shall be known as the commission-manager plan and shall consist of a commission of citizens, who shall be elected at large in the manner hereinafter provided.

History: (1)En. Sec. 1, Ch. 152, L. 1917; re-en. Sec. 5400, R.C.M. 1921; re-en. Sec. 5400, R.C.M. 1935; Sec. 11-3201, R.C.M. 1947; (2)En. Sec. 12, Ch. 152, L. 1917; re-en. Sec. 5410, R.C.M. 1921; re-en. Sec. 5410, R.C.M. 1935; amd. Sec. 1, Ch. 60, L. 1943; Sec. 11-3211, R.C.M. 1947; R.C.M. 1947, 11-3201, 11-3211(part).

7-3-4302. Construction. (1) Except as otherwise provided in this part and part 44, all acts and parts of acts and all laws now in force or hereafter enacted relative to municipal corporations are hereby continued in full force and effect and shall be considered and construed as not repealed by this part and part 44 except insofar as the same may be in conflict or inconsistent with the provisions of this part and part 44.

(2) This part and part 44 do not repeal or modify Title 69, chapter 3 or 69-4-101, and this part and part 44 do not curtail or impair the power or authority of the public service commission, and any order made, action taken, or regulation provided by the commission shall supersede and nullify any order, regulation, ordinance, or other action authorized by this part or part 44 in conflict with any such order, regulation, or action of said public service commission. However, the annual report relating to the operation of a public utility owned by a municipality operating under this part and part 44 to be made to the public service commission shall conform to the fiscal year of the city or town.

History: (1)En. Sec. 118, Ch. 152, L. 1917; re-en. Sec. 5515, R.C.M. 1921; amd. Sec. 19, Ch. 31, L. 1923; re-en. Sec. 5515, R.C.M. 1935; Sec. 11-3331, R.C.M. 1947; (2)En. Sec. 119, Ch. 152, L. 1917; re-en. Sec. 5516, R.C.M. 1921; amd. Sec. 20, Ch. 31, L. 1923; re-en. Sec. 5516, R.C.M. 1935; amd. Sec. 6, Ch. 315, L. 1974; Sec. 11-3332, R.C.M. 1947; R.C.M. 1947, 11-3331, 11-3332.

Cross-References

Public Service Commission, Title 69, ch. 1, part 1.

Regulation of municipal utilities, 69-3-101; Title 69, ch. 7.

7-3-4303. Laws governing municipality. (1) All laws governing municipalities of like population and not inconsistent with the provisions of this part and part 44 shall apply to and govern municipalities organized under this part and part 44. All bylaws, ordinances, and resolutions lawfully passed and in force in any such municipality under its organization, not in conflict herewith, shall remain in force until altered or repealed by the commission under the provisions of this part and part 44.

(2) The powers which are conferred and the duties which are imposed upon any officer, board, or commission or department of the municipality under the laws of the state shall, if such officer, board, commission, or department is abolished by this part and part 44, be thereafter exercised and discharged by the officer, board, commission, or department upon whom are imposed corresponding functions, duties, and powers under the provisions of this part and part 44.

History: (1)En. Sec. 8, Ch. 152, L. 1917; re-en. Sec. 5407, R.C.M. 1921; re-en. Sec. 5407, R.C.M. 1935; Sec. 11-3208, R.C.M. 1947; (2)En. Sec. 112, Ch. 152, L. 1917; re-en. Sec. 5509, R.C.M. 1921; re-en. Sec. 5509, R.C.M. 1935; Sec. 11-3325, R.C.M. 1947; R.C.M. 1947, 11-3208(part), 11-3325(part).

7-3-4304. Territorial limits and property. The territorial limits of such municipality shall remain the same as under the former organization, and all rights and property of every description which were vested in any such municipality under its former organization shall vest in the same under the organization herein contemplated, and no right or liability either in favor of or against it, existing at the time and no suit or prosecution of any kind shall be affected by such change unless otherwise provided for in this part or part 44.

History: En. Sec. 8, Ch. 152, L. 1917; re-en. Sec. 5407, R.C.M. 1921; re-en. Sec. 5407, R.C.M. 1935; R.C.M. 1947, 11-3208(part).

7-3-4305. Petition to organize under commission-manager form — election required. (1) Upon the filing of a petition with the city or town council, signed by not less than 15% of the qualified electors of the municipality registered for the last general municipal election, proposing that the question of reorganization under this part and part 44 be submitted to the qualified electors of the municipality, the city or town council shall order a special election to be held in conjunction with a regular or primary election. At the election, the question of reorganization of the municipality under the provisions of this part and part 44 must be submitted to the qualified electors of the municipality.

(2) The order of the city or town council must specify the time when the election will be held.

History: En. Sec. 2, Ch. 152, L. 1917; re-en. Sec. 5401, R.C.M. 1921; re-en. Sec. 5401, R.C.M. 1935; R.C.M. 1947, 11-3202; amd. Sec. 11, Ch. 250, L. 1985; amd. Sec. 3, Ch. 319, L. 1993; amd. Sec. 21, Ch. 387, L. 1995.

Compiler's Comments

1995 Amendment: Chapter 387 in (1), near end of first sentence after "shall", deleted "within 30 days" and after "held" inserted "in conjunction with a regular or primary election"; in (2), at end after "held", deleted "which may not be less than 75 or more than 90 days from the date of the order of the council"; and made minor changes in style.

7-3-4306. Proclamation and notice of election. (1) Upon the city or town council ordering such special election to be held, the mayor of such municipality shall issue a proclamation setting forth the purpose for which such special election is held and the date of holding such special election.

(2) The proclamation shall be published for 10 consecutive days in each daily newspaper published in said municipality if there be such; otherwise, once a week for 2 consecutive weeks in each weekly newspaper published therein. Such proclamation shall also be posted in at least five public places within such municipality.

History: En. Sec. 3, Ch. 152, L. 1917; re-en. Sec. 5402, R.C.M. 1921; re-en. Sec. 5402, R.C.M. 1935; R.C.M. 1947, 11-3203.

7-3-4307. Form of ballot. At such election, the ballots to be used shall be printed on plain white paper and shall be headed "Special election for the purpose of submitting to the qualified electors of the (city, town) of (name of city or town) under chapter 152 of the acts of the fifteenth legislative assembly" and shall be substantially in the following form:

☐ FOR reorganization of the (city, town) of (name of city or town) under chapter 152 of the acts of the fifteenth legislative assembly.

☐ AGAINST reorganization of the (city, town) of (name of city or town) under chapter 152 of the acts of the fifteenth legislative assembly.

History: En. Sec. 4, Ch. 152, L. 1917; re-en. Sec. 5403, R.C.M. 1921; re-en. Sec. 5403, R.C.M. 1935; R.C.M. 1947, 11-3204(part).

7-3-4308. Conduct of election. Such election shall be conducted and the vote canvassed and the result declared in the same manner as provided by law in respect to other municipal elections.

History: En. Sec. 4, Ch. 152, L. 1917; re-en. Sec. 5403, R.C.M. 1921; re-en. Sec. 5403, R.C.M. 1935; R.C.M. 1947, 11-3204(part).

Cross-References

Elections, Title 13.

7-3-4309. Effect of vote on question of organization. (1) If such proposition is adopted, the mayor shall transmit to the governor, to the secretary of state, and to the county clerk and recorder each a certificate stating that such proposition was adopted.

(2) If such proposition shall not be adopted at such special election, such proposition shall not again be submitted to the electors of such municipality within a period of 2 years from the date of the last submission.

History: En. Sec. 5, Ch. 152, L. 1917; re-en. Sec. 5404, R.C.M. 1921; amd. Sec. 1, Ch. 31, L. 1923; re-en. Sec. 5404, R.C.M. 1935; R.C.M. 1947, 11-3205.

7-3-4310. Special election for municipal officers. (1) If the majority of the votes cast at the election are in favor of reorganization, the city or town council shall hold a meeting within 1 week after the election and order a special election to be held in conjunction with a regular or primary election for the purpose of electing the number of commissioners to which the municipality is entitled. This order must specify the time of holding the election. The mayor shall issue a proclamation setting forth the purpose for which the special election is held and the day of holding the election. The proclamation must be published for 10 successive days in each daily newspaper published in the municipality if there is a daily newspaper or for 2 successive weeks in each weekly newspaper published in the municipality. A copy of the proclamation must also be posted at each voting place within the municipality and in five of the most public places in the municipality.

(2) The election must be conducted, the vote must be canvassed, and the result must be declared in the same manner as provided by law for other municipal elections.

(3) The provisions of 7-3-4341 are to be followed in the special election, except that the date of the election must be in conjunction with a regular or primary election held before the special election.

History: (1)En. Sec. 6, Ch. 152, L. 1917; re-en. Sec. 5405, R.C.M. 1921; amd. Sec. 2, Ch. 31, L. 1923; re-en. Sec. 5405, R.C.M. 1935; Sec. 11-3206, R.C.M. 1947; (2), (3)En. Sec. 7, Ch. 152, L. 1917; re-en. Sec. 5406, R.C.M. 1921; re-en. Sec. 5406, R.C.M. 1935; amd. Sec. 1, Ch. 161, L. 1973; Sec. 11-3207, R.C.M. 1947; R.C.M. 1947, 11-3206, 11-3207; amd. Sec. 39, Ch. 575, L. 1981; amd. Sec. 12, Ch. 250, L. 1985; amd. Sec. 22, Ch. 387, L. 1995.

Compiler's Comments

1995 Amendment: Chapter 387 in (1), in first sentence after "favor of", substituted "reorganization" for "such proposition" and after "held" inserted "in conjunction with a regular or primary election" and in second sentence, at end, deleted "which must be no less than 75 or more than 90 days after the making of such order"; in (3) substituted "election must be in conjunction with a regular or primary election held" for "primary election shall be at least 85 days"; and made minor changes in style.

Cross-References

Elections, Title 13.

7-3-4311. Procedure for multimunicipality organization. (1) Whenever the inhabitants of any community or group of communities in any county, whether separately incorporated in whole or in part or unincorporated desire to be organized into or annexed to an incorporated city or town under the provisions of this part and part 44, the board of county commissioners of the county may or upon the presentation of a petition signed by not less than 25% of the qualified electors in the community or group of communities shall issue a proclamation ordering a special election to be held in conjunction with a regular or primary election.

(2) At this election, the question of the organization of the community or group of communities as a municipality under the provisions of this part and part 44 must be submitted to the qualified electors within the proposed municipal district. The proclamation must specify the time when and the places where the election will be held and must define the boundaries of the proposed municipal district, which must include all communities, cities, and any additional adjacent territory that, in the judgment of the board of county commissioners, provides for future urban growth.

(3) If a majority of the legal voters at the election vote in favor of the organization of the municipal district or in favor of annexation to an incorporated city or town, then the board of county commissioners shall declare the result of the election and shall give notice for 30 days in a newspaper published within the proposed municipal district or, if a newspaper is not published in the proposed district, by posting notices in six public places within the limits of the district of the time and place or places of holding the first election for commissioners of the municipal district under this law. At the election, all electors qualified by the general election laws of the state who have resided within the limits of the municipal district for 6 months are qualified electors. The board of county commissioners shall appoint judges and clerks of election and canvass and declare the result of the election. The election must be held in conjunction with a regular or primary election and must be conducted in the manner prescribed by law for the election of county officers. The commissioners elected must qualify in the manner prescribed by law for county officers.

History: En. Sec. 9, Ch. 152, L. 1917; amd. Sec. 1, Ch. 44, L. 1919; re-en. Sec. 5408, R.C.M. 1921; re-en. Sec. 5408, R.C.M. 1935; R.C.M. 1947, 11-3209; amd. Sec. 13, Ch. 250, L. 1985; amd. Sec. 23, Ch. 387, L. 1995.

Compiler's Comments

1995 Amendment: Chapter 387 in (1), near beginning after "unincorporated", deleted "which are situated in such proximity or location with reference to each other as to make single municipal control necessary or desirable, shall" and at end inserted "in conjunction with a regular or primary election"; in (2), in second sentence after "held", deleted "which must be no less than 75 or more than 90 days from the date of filing such petition"; in (3), in fourth sentence, inserted "must be held in conjunction with a regular or primary election and"; and made minor changes in style.

7-3-4312. Effect of organization of communities into single municipal district. (1) Whenever any group of communities shall become a single municipal district under the provisions of this law, the commissioners elected at the first election shall have the same functions and authority and municipal procedure in all respects shall be the same as is provided in this law where single communities, cities, or towns adopt the commission-manager form of government, and the terms of all municipal officers in any prior city or town which may be included in such new municipal district shall in like manner cease and terminate as soon as the commissioners shall by resolution so declare, and the corporate functions and existence of any such prior municipal corporation may in like manner be terminated by said commissioners when the need for the further existence of such prior corporation shall be at an end.

(2) Whenever any group of communities, including one or more incorporated cities or towns, shall become a single municipal district under this law, such municipal district shall bear the same name as the principal incorporated city or town in such district.

(3) Whenever any group of communities, including one or more incorporated cities or towns, shall become a single municipal district under this law, the corporate property of each such city or town shall become the property of the new municipality, but improvements paid for in whole or in part by special assessments upon abutting property within special improvement districts shall not be deemed municipal property within the meaning of this law to the extent of payments so made. If such prior city or town shall have an unpaid indebtedness, the commissioners of said new municipality elected at the first municipal election shall inventory and appraise or cause to be inventoried and appraised all of such property, and if the amount of the indebtedness of such prior city or town shall exceed the inventory value of the property surrendered to the new municipality by such prior city or town, then the excess of such indebtedness over the inventory value of said property shall be a charge only against the taxable property within the limits of such prior city or town and shall be paid by levy upon such property alone.

History: (1)En. Sec. 121, Ch. 152, L. 1917 added by Sec. 6, Ch. 44, L. 1919; re-en. Sec. 5517, R.C.M. 1921; re-en. Sec. 5517, R.C.M. 1935; Sec. 11-3333, R.C.M. 1947; (2)En. Sec. 122, Ch. 152, L. 1917 added by Sec. 6, Ch. 44, L. 1919; re-en. Sec. 5518, R.C.M. 1921; re-en. Sec. 5518, R.C.M. 1935; Sec. 11-3334, R.C.M. 1947; (3)En. Sec. 123, Ch. 152, L. 1917 added by Sec. 6, Ch. 44, L. 1919; re-en. Sec. 5519, R.C.M. 1921; re-en. Sec. 5519, R.C.M. 1935; Sec. 11-3335, R.C.M. 1947; R.C.M. 1947, 11-3333, 11-3334, 11-3335.

7-3-4313. Powers of municipalities under commission-manager plan. (1) The inhabitants of any municipality coming under the provisions of this part and part 44, as its limits now are or may hereafter be, shall be a body politic and corporate and have a corporate name and as such shall have perpetual succession and may use a corporate seal. Through its duly elected officers, it may sue and be sued; may acquire property in fee simple or lesser interest or estate by purchase, gift, devise, appropriation, lease, or lease with the privilege to purchase for any municipal purpose; may sell, lease, hold, manage, and control such property and make any and all rules, by ordinance or resolution, which may be required to carry out fully all provisions of any conveyance, deed, or will, in relation to any gift or bequest, or the provisions of any lease by which it may acquire property; may acquire, construct, own, lease, and operate and regulate public utilities; may assess, levy, and collect taxes for general and special purposes on all the subjects or objects which the municipality may lawfully tax; may borrow money on the faith and credit of the municipality by the issue or sale of bonds or notes of the municipality; may appropriate money of the municipality for all lawful purposes; may create, provide for, construct, regulate and maintain all things of nature of public works and improvements; may levy and collect assessments for improvement districts and other local improvements; may license and regulate persons, corporations, and associations engaged in any business, occupation, profession, or trade; may define, prohibit, abate, suppress, and prevent all things detrimental to the health, morals, comfort, safety, convenience, and welfare of the inhabitants of the municipality and all nuisances and the causes thereof; may regulate the construction, height, and the material used in all buildings and the maintenance and occupancy thereof; may regulate and control the use, for whatever purpose, of the streets and other public places; may create, establish, abolish, and organize offices and fix the salaries and compensation of all officers and employees; may make and enforce local sanitary and police and other regulations; and may pass such ordinances as may be expedient for maintaining and promoting peace, good government, and welfare of the municipality and for the performance of the functions thereof.

(2) The municipality shall have all powers that now are or hereafter may be granted to municipalities by the constitution or laws of Montana. All such powers, whether expressed or implied, shall be exercised and enforced in the manner prescribed by this part and part 44 or, when not prescribed therein, in such manner as shall be prescribed by the ordinances or resolutions of the commission.

History: En. Sec. 10, Ch. 152, L. 1917; re-en. Sec. 5409, R.C.M. 1921; re-en. Sec. 5409, R.C.M. 1935; R.C.M. 1947, 11-3210.

7-3-4314. Composition and general authority of commission. (1) The commission shall consist of three commissioners for all municipalities having a population of less than 15,000 and five commissioners for all cities having a population of 15,000 or more.

(2) The commission shall constitute the governing body, with powers as hereinafter provided to pass ordinances, adopt regulations, and appoint a chief administrative officer, to be known as the city manager, and to exercise all powers as hereinafter provided.

History: En. Sec. 12, Ch. 152, L. 1917; re-en. Sec. 5410, R.C.M. 1921; re-en. Sec. 5410, R.C.M. 1935; amd. Sec. 1, Ch. 60, L. 1943; R.C.M. 1947, 11-3211(part).

7-3-4315. Qualifications of commissioners. Members of the commission shall be residents of the city or town and have the qualifications of electors.

History: En. Sec. 15, Ch. 152, L. 1917; re-en. Sec. 5413, R.C.M. 1921; amd. Sec. 4, Ch. 31, L. 1923; re-en. Sec. 5413, R.C.M. 1935; amd. Sec. 1, Ch. 327, L. 1974; R.C.M. 1947, 11-3214(part).

Cross-References

Electors, Art. IV, sec. 2, Mont. Const.; 13-1-111.

7-3-4316. Term of office for commissioners. (1) The commissioners elected at the first election shall qualify and their terms of office shall begin on the first Monday after their election, and the terms of office of the mayor and councilmen or aldermen in such city or town in office at the beginning of the term of office of the commissioners first elected under the provisions of this part and part 44 shall cease and terminate and the terms of office of all their appointed officers and of all of the employees of such city or town shall cease and terminate as soon as the commissioners shall by resolution declare.

(2) All commissioners shall serve for a term of 4 years and until their successors are elected and have qualified, except that at the first election the two candidates having the highest number of votes shall hold office for a period of 4 years less the time elapsed since December 31 of the odd-numbered year last preceding. The terms of office of all other candidates shall expire on December 31 in any odd-numbered year following the special election provided for in this part at which the first commissioners are elected.

History: En. Sec. 13, Ch. 152, L. 1917; re-en. Sec. 5411, R.C.M. 1921; amd. Sec. 3, Ch. 31, L. 1923; re-en. Sec. 5411, R.C.M. 1935; R.C.M. 1947, 11-3212.

7-3-4317. Vacancies. Vacancies in the commission shall be filled by the commission for the period until the next general election and until a successor is elected and qualified, but any vacancy resulting from a recall shall be filled in the manner provided in such case.

History: En. Sec. 14, Ch. 152, L. 1917; re-en. Sec. 5412, R.C.M. 1921; re-en. Sec. 5412, R.C.M. 1935; R.C.M. 1947, 11-3213; amd. Sec. 2, Ch. 175, L. 1985.

7-3-4318. Repealed. Sec. 2, Ch. 486, L. 1993.

History: (1)En. Sec. 45, Ch. 152, L. 1917; re-en. Sec. 5443, R.C.M. 1921; amd. Sec. 8, Ch. 31, L. 1923; re-en. Sec. 5443, R.C.M. 1935; amd. Sec. 9, Ch. 67, L. 1967; Sec. 11-3244, R.C.M. 1947; (2)En. Sec. 113, Ch. 152, L. 1917; re-en. Sec. 5510, R.C.M. 1921; re-en. Sec. 5510, R.C.M. 1935; amd. Sec. 2, Ch. 7, L. 1973; Sec. 11-3326, R.C.M. 1947; R.C.M. 1947, 11-3244, 11-3326.

7-3-4319. Designation of mayor. (1) The mayor shall be that member of the commission who, at the regular municipal election at which the commissioners were elected, received the highest number of votes. In case two candidates receive the same number of votes, one of them shall be chosen mayor by the remaining members of the commission.

(2) In event of a vacancy in the office of the mayor by the expiration of his term of office, the holdover commissioner having received the highest number of votes shall be the mayor. In the event there is a vacancy in the office of the mayor for any other cause, the remaining members of the commission shall choose his successor for the unexpired term from their own number by lot.

(3) In the event that the commissioner who is acting as mayor shall be recalled, the remaining members of the commission shall select one of their number to serve as mayor for the unexpired term. In the event of the recall of all the commissioners, the person receiving the highest number of votes at the election held to determine their successors shall serve as the mayor.

History: (1), (2)En. Sec. 46, Ch. 152, L. 1917; re-en. Sec. 5444, R.C.M. 1921; amd. Sec. 9, Ch. 31, L. 1923; re-en. Sec. 5444, R.C.M. 1935; Sec. 11-3245, R.C.M. 1947; (3)En. Sec. 47, Ch. 152, L. 1917; re-en. Sec. 5445, R.C.M. 1921; re-en. Sec. 5445, R.C.M. 1935; Sec. 11-3246, R.C.M. 1947; R.C.M. 1947, 11-3245(part), 11-3246.

7-3-4320. Role of mayor. The mayor shall be the presiding officer, except that in his absence, a president pro tempore may be chosen. The mayor shall exercise such powers conferred and perform all duties imposed upon him by this part and part 44, the ordinances of the municipality, and the laws of the state, except that he shall have no power to veto any measure. He shall be recognized as the official head of the municipality by the courts for the purpose of serving civil processes, by the governor for the purposes of the military law, and for all ceremonial purposes.

History: **En. Sec. 46, Ch. 152, L. 1917; re-en. Sec. 5444, R.C.M. 1921; amd. Sec. 9, Ch. 31, L. 1923; re-en. Sec. 5444, R.C.M. 1935; R.C.M. 1947, 11-3245(part).**

7-3-4321. Compensation of commissioners and mayor. The salary of each commissioner may be as follows: the salary of each commissioner shall be as established by ordinance in all classes of cities, and the salary of the commissioner acting as mayor may be 1 ½ times that of the other commissioners.

History: **En. Sec. 49, Ch. 152, L. 1917; amd. Sec. 2, Ch. 44, L. 1919; re-en. Sec. 5447, R.C.M. 1921; re-en. Sec. 5447, R.C.M. 1935; amd. Sec. 1, Ch. 10, L. 1949; amd. Sec. 1, Ch. 71, L. 1965; amd. Sec. 1, Ch. 289, L. 1969; amd. Sec. 1, Ch. 33, L. 1971; R.C.M. 1947, 11-3248.**

7-3-4322. Meetings of commission. (1) At 10 a.m. on the first Monday after January 1 following a regular municipal election, the commission shall meet at the usual place for holding the meetings of the legislative body of the municipality, at which time the newly elected commissioners shall assume the duties of their office. Thereafter, the commissioners shall meet at such times as may be prescribed by ordinance or resolution, except that in municipalities having less than 5,000 inhabitants, they shall meet regularly at least once and not more than four times per month and in municipalities having more than 5,000 inhabitants, they shall meet not less than once every 2 weeks.

(2) Absence from five consecutive regular meetings shall operate to vacate the seat of a member unless such absence be authorized by the commission.

(3) The commissioner acting as mayor, any two members of the commission, or the city manager may call special meetings of the commission upon at least 12 hours written notice to each member of the commission, served personally on each member or left at his usual place of residence.

History: **En. Sec. 50, Ch. 152, L. 1917; re-en. Sec. 5448, R.C.M. 1921; amd. Sec. 10, Ch. 31, L. 1923; re-en. Sec. 5448, R.C.M. 1935; R.C.M. 1947, 11-3249(part).**

7-3-4323. Conduct of commission business. (1) In municipalities having three commissioners, two commissioners shall constitute a quorum and the affirmative vote of two commissioners shall be necessary to adopt or reject any motion, resolution, or ordinance or pass any measure unless a greater number is provided for in this part or part 44. In municipalities having five commissioners, three commissioners shall constitute a quorum and the affirmative vote of three commissioners shall be necessary to adopt or reject any motion, resolution, or ordinance or pass any measure unless a greater number is provided for in this part or part 44.

(2) Upon every vote, the ayes and the nays shall be called and recorded, and every motion, resolution, or ordinance shall be reduced to writing and read before the vote is taken thereon.

(3) All meetings of the commission shall be public and any citizen shall have access to the minutes and records thereof at all reasonable times. The commission shall determine its own rules and order of business and shall keep a journal of its proceedings.

(4) The commission shall choose a clerk and such other officers and employees of its own body as are necessary. The clerk shall be known as the clerk of the commission and shall keep records and perform such other duties as may be required by this part or part 44 or the commission.

History: (1), (2)En. Sec. 48, Ch. 152, L. 1917; re-en. Sec. 5446, R.C.M. 1921; re-en. Sec. 5446, R.C.M. 1935; Sec. 11-3247, R.C.M. 1947; (3)En. Sec. 50, Ch. 152, L. 1917; re-en. Sec. 5448, R.C.M. 1921; amd. Sec. 10, Ch. 31, L. 1923; re-en. Sec. 5448, R.C.M. 1935; Sec. 11-3249, R.C.M. 1947; (4)En. Sec. 53, Ch. 152, L. 1917; re-en. Sec. 5451, R.C.M. 1921; re-en. Sec. 5451, R.C.M. 1935; Sec. 11-3252, R.C.M. 1947; R.C.M. 1947, 11-3247, 11-3249(part), 11-3252.

7-3-4324. Procedure to enact ordinance or resolution. (1) Each proposed ordinance or resolution shall be introduced in written or printed form and shall not contain more than one subject, which shall be clearly stated in the title, but general appropriation ordinances may contain the various subjects and accounts for which money is to be appropriated. Every ordinance or resolution passed by the commission shall be signed by the mayor or two members and filed with the clerk within 2 days and by him recorded.

(2) The enacting clause of all ordinances passed by the commission shall be "Be it ordained by the commission of the (city or town) of (name of city or town)". The enacting clause of all ordinances submitted by the initiative shall be "Be it ordained by the people of the (city or town) of (name of city or town)".

(3) No ordinance, unless it be declared an emergency, shall be passed on the day on which it shall have been introduced unless so ordered by an affirmative vote of four-fifths of the members of the commission in cities with five commissioners and two-thirds of the members of the commission in all other cities and towns.

(4) No ordinance or resolution or section thereof shall be revised or amended unless the new ordinance or resolution contains the entire ordinance or resolution or section revised or amended.

(5) Every ordinance or resolution, upon its final passage, shall be recorded in a book kept for that purpose and shall be authenticated by the signature of the presiding officer and the clerk of the commission. At least the number and title of every ordinance or resolution shall be published at least once within 10 days after its final passage in such manner as is provided in this part.

History: (1) thru (4)En. Sec. 51, Ch. 152, L. 1917; re-en. Sec. 5449, R.C.M. 1921; amd. Sec. 11, Ch. 31, L. 1923; re-en. Sec. 5449, R.C.M. 1935; Sec. 11-3250, R.C.M. 1947; (5)En. Sec. 55, Ch. 152, L. 1917; re-en. Sec. 5453, R.C.M. 1921; re-en. Sec. 5453, R.C.M. 1935; Sec. 11-3254, R.C.M. 1947; R.C.M. 1947, 11-3250, 11-3254.

Cross-References

Local government ordinances, Title 7, ch. 5, part 1.

Municipal ordinances — generally, Title 7, ch. 5, part 42.

7-3-4325. Effective date of ordinance or resolution. (1) All ordinances are effective 30 days after the date of their passage by the commission except as otherwise provided in this part or part 44.

(2) All resolutions are immediately effective unless a delayed effective date is specified in the resolution.

(3) The commission may, by an affirmative vote of two-thirds of all the members, pass emergency measures to take effect at the time indicated in the measure.

History: En. Sec. 52, Ch. 152, L. 1917; re-en. Sec. 5450, R.C.M. 1921; re-en. Sec. 5450, R.C.M. 1935; R.C.M. 1947, 11-3251(part); amd. Sec. 1, Ch. 309, L. 1993.

7-3-4326. Emergency measures. (1) An emergency measure is an ordinance or resolution for the immediate preservation of the public peace, property, health, or safety or providing for the usual daily operation of a municipal department, in which the emergency is set forth and defined in a preamble thereto. Ordinances or resolutions appropriating money or ordering any street improvement or sewer, unless it is endangering the health or safety of the inhabitants, or granting any franchise or extension of franchise or other special privilege or regulating the rate to be charged for its services by any public utility or right to occupy or use the streets, highways, bridges, or other public places shall never be passed as emergency measures.

(2) Ordinances passed as emergency measures shall be subject to a referendum in like manner as other ordinances, except that they shall go into effect at the time indicated in such ordinances. If, when submitted to a vote of the electors, an emergency measure is not approved by a majority of those voting thereon, it shall be considered repealed as regards any further action thereunder; but such measure so repealed shall be deemed sufficient authority for payment, in accordance with the ordinance, of any expense incurred previous to the referendum vote thereon.

History: (1)En. Sec. 52, Ch. 152, L. 1917; re-en. Sec. 5450, R.C.M. 1921; re-en. Sec. 5450, R.C.M. 1935; Sec. 11-3251, R.C.M. 1947; (2)En. Sec. 43, Ch. 152, L. 1917; re-en. Sec. 5441, R.C.M. 1921; re-en. Sec. 5441, R.C.M. 1935; Sec. 11-3242, R.C.M. 1947; R.C.M. 1947, 11-3242, 11-3251(part).

7-3-4327. Petition for initiative. (1) Any proposed ordinance may be submitted to the commission by petition signed by at least 15% of the total number of electors registered at the last general municipal election. All petition papers circulated with respect to any proposed ordinance must be uniform in character and must contain the proposed ordinance in full and have printed or written on the petition the names and addresses of at least five electors who must be officially regarded as filing the petition and who constitute a committee of the petitioners for the purposes of this section.

(2) Each signer of a petition shall sign the person's name in ink or indelible pencil and shall place on the petition papers, after the name, the person's place of residence by street and number. The signatures of any petition papers need not all be appended to one paper, but to each paper there must be attached an affidavit by the circulator of the petition, stating the number of signers to that part of the petition and that each signature appended to the paper is the genuine signature of the person whose name it purports to be and was made in the presence of the affiant.

(3) Proposed ordinances for repealing any existing ordinance or ordinances, in whole or in part, may be submitted to the commission as provided for initiating ordinances.

(4) Initiated ordinances adopted by the electors must be published and may be amended or repealed by the commission as in the case of other ordinances.

History: (1)En. Sec. 31, Ch. 152, L. 1917; re-en. Sec. 5429, R.C.M. 1921; re-en. Sec. 5429, R.C.M. 1935; Sec. 11-3230, R.C.M. 1947; (2)En. Sec. 32, Ch. 152, L. 1917; re-en. Sec. 5430, R.C.M. 1921; re-en. Sec. 5430, R.C.M. 1935; Sec. 11-3231, R.C.M. 1947; (3), (4)En. Sec. 37, Ch. 152, L. 1917; re-en. Sec. 5435, R.C.M. 1921; re-en. Sec. 5435, R.C.M. 1935; Sec. 11-3236, R.C.M. 1947; R.C.M. 1947, 11-3230, 11-3231, 11-3236; amd. Sec. 4, Ch. 319, L. 1993.

Cross-References

Local government initiative and referendum, Art. XI, sec. 8, Mont. Const.

7-3-4328 through 7-3-4333. Repealed. Sec. 407, Ch. 571, L. 1979.

Compiler's Comments

Histories of Repealed Sections:

7-3-4328. En. Sec. 33, Ch. 152, L. 1917; re-en. Sec. 5431, R.C.M. 1921; re-en. Sec. 5431, R.C.M. 1935; R.C.M. 1947, 11-3232(part).

7-3-4329. En. Sec. 33, Ch. 152, L. 1917; re-en. Sec. 5431, R.C.M. 1921; re-en. Sec. 5431, R.C.M. 1935; R.C.M. 1947, 11-3232(part).

7-3-4330. (1)En. Sec. 34, Ch. 152, L. 1917; re-en. Sec. 5432, R.C.M. 1921; re-en. Sec. 5432, R.C.M. 1935; Sec. 11-3233, R.C.M. 1947; (2)En. Sec. 35, Ch. 152, L. 1917; re-en. Sec. 5433, R.C.M. 1921; re-en. Sec. 5433, R.C.M. 1935; Sec. 11-3234, R.C.M. 1947; (3)En. Sec. 36, Ch. 152, L. 1917; re-en. Sec. 5434, R.C.M. 1921; re-en. Sec. 5434, R.C.M. 1935; Sec. 11-3235, R.C.M. 1947; R.C.M. 1947, 11-3233, 11-3234, 11-3235(part).

7-3-4331. En. Sec. 36, Ch. 152, L. 1917; re-en. Sec. 5434, R.C.M. 1921; re-en. Sec. 5434, R.C.M. 1935; R.C.M. 1947, 11-3235(part).

7-3-4332. (1)En. Sec. 38, Ch. 152, L. 1917; re-en. Sec. 5436, R.C.M. 1921; re-en. Sec. 5436, R.C.M. 1935; Sec. 11-3237, R.C.M. 1947; (2)En. Sec. 39, Ch. 152, L. 1917; re-en. Sec. 5437, R.C.M. 1921; re-en. Sec. 5437, R.C.M. 1935; Sec. 11-3238, R.C.M. 1947; (3)En. Sec. 40, Ch. 152, L. 1917; re-en. Sec. 5438, R.C.M. 1921; re-en. Sec. 5438, R.C.M. 1935; Sec. 11-3239, R.C.M. 1947; (4)En. Sec. 41, Ch. 152, L. 1917; re-en. Sec. 5439, R.C.M. 1921; re-en. Sec. 5439, R.C.M. 1935; Sec. 11-3240, R.C.M. 1947; (5)En. Sec. 42, Ch. 152, L. 1917; re-en. Sec. 5440, R.C.M. 1921; re-en. Sec. 5440, R.C.M. 1935; Sec. 11-3241, R.C.M. 1947; R.C.M. 1947, 11-3237(part), 11-3238, 11-3239, 11-3240, 11-3241.

7-3-4333. En. Sec. 44, Ch. 152, L. 1917; re-en. Sec. 5442, R.C.M. 1921; amd. Sec. 7, Ch. 31, L. 1923; re-en. Sec. 5442, R.C.M. 1935; R.C.M. 1947, 11-3243.

7-3-4334. Repealed. Sec. 9, Ch. 359, L. 1991.

History: En. Sec. 117, Ch. 152, L. 1917; re-en. Sec. 5514, R.C.M. 1921; re-en. Sec. 5514, R.C.M. 1935; R.C.M. 1947, 11-3330; amd. Sec. 301, Ch. 571, L. 1979.

7-3-4335 through 7-3-4340 reserved.

7-3-4341. General provisions relating to elections. (1) Except as otherwise provided in this part and part 44, all elections shall be conducted as provided in Title 13.

(2) Elected officials provided for in this part and part 44 shall be nominated and elected under the provisions of Title 13, chapter 14, part 1.

History: En. Sec. 17, Ch. 152, L. 1917; re-en. Sec. 5415, R.C.M. 1921; amd. Sec. 5, Ch. 31, L. 1923; re-en. Sec. 5415, R.C.M. 1935; R.C.M. 1947, 11-3216(5); amd. Sec. 302, Ch. 571, L. 1979.

7-3-4342 through 7-3-4352. Repealed. Sec. 407, Ch. 571, L. 1979.

Compiler's Comments

Histories of Repealed Sections:

7-3-4342. En. Sec. 19, Ch. 152, L. 1917; re-en. Sec. 5417, R.C.M. 1921; re-en. Sec. 5417, R.C.M. 1935; R.C.M. 1947, 11-3218.

7-3-4343. En. Sec. 17, Ch. 152, L. 1917; re-en. Sec. 5415, R.C.M. 1921; amd. Sec. 5, Ch. 31, L. 1923; re-en. Sec. 5415, R.C.M. 1935; R.C.M. 1947 11-3216(1), (2).

7-3-4344. En. Sec. 18, Ch. 152, L. 1917; re-en. Sec. 5416, R.C.M. 1921; re-en. Sec. 5416, R.C.M. 1935; R.C.M. 1947, 11-3217.

7-3-4345. En. Sec. 16, Ch. 152, L. 1917; re-en. Sec. 5414, R.C.M. 1921; re-en. Sec. 5414, R.C.M. 1935; amd. Sec. 1, Ch. 36, L. 1961; amd. Sec. 1, Ch. 2, L. 1973; amd. Sec. 9, Ch. 535, L. 1975; R.C.M. 1947, 11-3215(1).

7-3-4346. En. Sec. 16, Ch. 152, L. 1917; re-en. Sec. 5414, R.C.M. 1921; re-en. Sec. 5414, R.C.M. 1935; amd. Sec. 1, Ch. 36, L. 1961; amd. Sec. 1, Ch. 2, L. 1973; amd. Sec. 9, Ch. 535, L. 1975; R.C.M. 1947, 11-3215(2), (3).

7-3-4347. (1), (2)En. Sec. 16, Ch. 152, L. 1917; re-en. Sec. 5414, R.C.M. 1921; re-en. Sec. 5414, R.C.M. 1935; amd. Sec. 1, Ch. 36, L. 1961; amd. Sec. 1, Ch. 2, L. 1973; amd. Sec. 9, Ch. 535, L. 1975; Sec. 11-3215, R.C.M. 1947; (3)En. Sec. 17, Ch. 152, L. 1917; re-en. Sec. 5415, R.C.M. 1921; amd. Sec. 5, Ch. 31, L. 1923; re-en. Sec. 5415, R.C.M. 1935; Sec. 11-3216, R.C.M. 1947; R.C.M. 1947, 11-3215(4), 11-3216(part).

7-3-4348. En. Sec. 17, Ch. 152, L. 1917; re-en. Sec. 5415, R.C.M. 1921; amd. Sec. 5, Ch. 31, L. 1923; re-en. Sec. 5415, R.C.M. 1935; R.C.M. 1947, 11-3216(part).

7-3-4349. (1)En. Sec. 16, Ch. 152, L. 1917; re-en. Sec. 5414, R.C.M. 1921; re-en. Sec. 5414, R.C.M. 1935; amd. Sec. 1, Ch. 36, L. 1961; amd. Sec. 1, Ch. 2, L. 1973; amd. Sec. 9, Ch. 535, L. 1975; Sec. 11-3215, R.C.M. 1947; (2)En. Sec. 17, Ch. 152, L. 1917; re-en. Sec. 5415, R.C.M. 1921; amd. Sec. 5, Ch. 31, L. 1923; re-en. Sec. 5415, R.C.M. 1935; Sec. 11-3216, R.C.M. 1947; R.C.M. 1947, 11-3215(5), 11-3216(4).

7-3-4350. En. Sec. 1, Ch. 75, L. 1955; R.C.M. 1947, 11-3218.1.

7-3-4351. En. Sec. 20, Ch. 152, L. 1917; re-en. Sec. 5418, R.C.M. 1921; amd. Sec. 6, Ch. 31, L. 1923; re-en. Sec. 5418, R.C.M. 1935; R.C.M. 1947, 11-3219.

7-3-4352. (1)En. Sec. 29, Ch. 152, L. 1917; re-en. Sec. 5427, R.C.M. 1921; re-en. Sec. 5427, R.C.M. 1935; Sec. 11-3228, R.C.M. 1947; (2)En. Sec. 30, Ch. 152, L. 1917; re-en. Sec. 5428, R.C.M. 1921; re-en. Sec. 5428, R.C.M. 1935; amd. Sec. 2, Ch. 166, L. 1971; amd. Sec. 4, Ch. 100, L. 1973; Sec. 11-3229, R.C.M. 1947; R.C.M. 1947, 11-3228, 11-3229.

7-3-4353 through 7-3-4360 reserved.

7-3-4361. Appointment of city manager. The commission shall appoint a city manager. He shall be appointed without regard to his political beliefs and may or may not be a resident of the municipality when appointed. He shall hold office at the will of the commission.

History: En. Sec. 57, Ch. 152, L. 1917; re-en. Sec. 5455, R.C.M. 1921; re-en. Sec. 5455, R.C.M. 1935; R.C.M. 1947, 11-3256(part).

7-3-4362. Role of city manager. The city manager shall be the administrative head of the municipal government and shall be responsible for the efficient administration of all departments.

History: En. Sec. 57, Ch. 152, L. 1917; re-en. Sec. 5455, R.C.M. 1921; re-en. Sec. 5455, R.C.M. 1935; R.C.M. 1947, 11-3256(part).

7-3-4363. Powers and duties of city manager. The powers and duties of the city manager shall be:

(1) to see that the laws and ordinances are enforced;

(2) to appoint and, except as herein provided, remove all directors of departments and all subordinate officers and employees in the departments in both the classified and unclassified service; all appointments to be upon merit and fitness alone and in the classified service all appointments to be subject to the civil service provisions of this part and part 44;

(3) to exercise control over all the departments and divisions created herein or that may hereafter be created by the commission;

(4) to attend all meetings of the commission, with the right to take part in the discussions but having no vote;

(5) to recommend to the commission for adoption such measures as he may deem necessary or expedient;

(6) to keep the commission fully advised as to the financial condition and needs of the city; and

(7) to perform such other duties as may be prescribed by this part or part 44 or be required of him by ordinance or resolution of the commission.

History: En. Sec. 58, Ch. 152, L. 1917; re-en. Sec. 5456, R.C.M. 1921; re-en. Sec. 5456, R.C.M. 1935; R.C.M. 1947, 11-3257.

7-3-4364. Compensation of city manager. The city manager shall receive such salary as may be fixed by ordinance of the commission, but such salary shall not be decreased during the term of office that the city manager is appointed for.

History: En. Sec. 59, Ch. 152, L. 1917; re-en. Sec. 5457, R.C.M. 1921; re-en. Sec. 5457, R.C.M. 1935; R.C.M. 1947, 11-3258.

7-3-4365. Investigations by commission. (1) The commission or any committee thereof duly authorized by the commission to do so may investigate the financial transactions of any office or department of the municipal government and the official acts of any municipal official and by similar investigations may secure information upon any matter.

(2) In conducting such investigations, the commission or any committee thereof may compel the attendance of witnesses and the production of books, papers, and other evidence and for that purpose may issue subpoenas or attachments, which shall be signed by the presiding officer of the commission or the chairman of such committee, as the case may be, and which may be served and executed by any officer authorized by law to serve subpoenas or other process. No witness may be excused from testifying touching his knowledge of the matter under investigation in any such inquiry, but such testimony may not be used against him in any criminal prosecution except for perjury committed upon such inquiry.

History: En. Sec. 56, Ch. 152, L. 1917; re-en. Sec 5454, R.C.M. 1921; re-en. Sec. 5454, R.C.M. 1935; R.C.M. 1947, 11-3255; amd. Sec. 24, Ch. 262, L. 1979.

Cross-References

Witnesses and subpoenas, Title 26, ch. 2.

7-3-4366. Investigatory powers of city manager. The city manager may, without notice, cause the affairs of any department or the conduct of any officer or employee to be examined. Any person appointed by the city manager to examine the affairs of any department or the conduct of any officer or employee has the same power to compel the attendance of witnesses and the production of books and papers and other evidence as is conferred upon the commission by this part.

History: En. Sec. 60, Ch. 152, L. 1917; re-en. Sec. 5458, R.C.M. 1921; re-en. Sec. 5458, R.C.M. 1935; R.C.M. 1947, 11-3259; amd. Sec. 25, Ch. 262, L. 1979.

7-3-4367. Control of conflict of interest. (1) Commissioners and other officers and employees shall not be interested in the profits or emoluments of any contract, job, work, or service for the municipality and shall not hold any partisan political office or employment. Any commissioner who shall cease to possess any of the qualifications herein required shall forthwith forfeit his office, and any such contract in which any member is or may be interested may be declared void by the commission.

(2) No commissioner or other officer or employee of said city or town shall accept any frank, free ticket, pass, or service, directly or indirectly, from any person, firm, or corporation upon terms more favorable than are granted to the public generally. Any violation of the provisions of this section shall be a misdemeanor and shall also be sufficient cause for the summary removal or discharge of the offender. Such provisions for free service shall not apply to policemen or firefighters in uniform or wearing their official badges where the same is provided by ordinance or to any commissioner or to the city manager or to the city attorney upon official business, or to any other employee or official of said city on official business who exhibits written authority signed by the city manager.

History: En. Sec. 15, Ch. 152, L. 1917; re-en. Sec. 5413, R.C.M. 1921; amd. Sec. 4, Ch. 31, L. 1923; re-en. Sec. 5413, R.C.M. 1935; amd. Sec. 1, Ch. 327, L. 1974; R.C.M. 1947, 11-3214(part).

Cross-References

Rules of conduct — local officers and employees, 2-2-125.

7-3-4368. Execution of conveyances of real property. In all cities operating under the commission-manager form in Montana, the mayor is hereby designated as the proper officer to execute conveyances of real property; however, a majority of the commission may designate the city manager to execute a conveyance. In either case, the authority to act shall be authorized by the passage of a resolution.

History: En. Sec. 1, Ch. 54, L. 1955; R.C.M. 1947, 11-3286.

7-3-4369. Appropriation of property for public or municipal purposes. Property within the corporate limits of the municipality may be appropriated for any public or municipal purpose, and to the full extent of the authority granted by the constitution of the state, such appropriation shall be made as herein provided. By such appropriation, the municipality may acquire a fee simple title or any less estate, easement, or use. Appropriations of property outside of the corporate limits of the municipality shall be made according to the requirements of and as provided by general law.

History: En. Sec. 97, Ch. 152, L. 1917; re-en. Sec. 5495, R.C.M. 1921; re-en. Sec. 5495, R.C.M. 1935; R.C.M. 1947, 11-3311.

7-3-4370. Use of county buildings. Whenever any city organized under this part and part 44 includes the county seat of the county in which it is situated, any unused space in the county buildings in such city may be rented to the city commissioners for municipal use by the board of county commissioners for such rent as shall represent an income of not more than 6% upon the investment in such buildings proportionate to the space rented. Such commissioners may also contract with the board of county commissioners for the performance by county officials or employees of any kind of municipal work which can be feasibly performed by them. The compensation for such work shall be based upon additional cost to the county of its performance, and such compensation shall be paid into the general fund of such county unless otherwise provided by law.

History: En. Sec. 124, Ch. 152, L. 1917 added by Sec. 6, Ch. 44, L. 1919; re-en. Sec. 5520, R.C.M. 1921; re-en. Sec. 5520, R.C.M. 1935; R.C.M. 1947, 11-3336.

7-3-4371. Estimate of expenditures and revenues — exception. (1) The city manager shall submit to the commission an estimate of the expenditures and revenues of the municipal departments for the ensuing year. The estimate must be compiled from detailed information obtained from the several departments on uniform blanks to be furnished by the city manager. The classification of the expenditures must be as nearly uniform as possible for the main functional divisions of all departments and must give in parallel columns the following information:

(a) a detailed estimate of the expenses of conducting each department as submitted by the department;

(b) expenditures for corresponding items for the last 2 fiscal years;

(c) expenditures for the corresponding items for the current fiscal year, including adjustments due to transfers between appropriations, plus an estimate of expenditure necessary to complete the current fiscal year;

(d) amount of supplies and materials on hand at the date of the preparation of the invoice;

(e) increase or decrease of requests compared with the corresponding appropriations for the current year;

(f) other information that is required by the commission or that the city manager may consider advisable to submit;

(g) the recommendation of the city manager as to the amounts to be appropriated, with reasons for the recommendation, in the detail that the commission may direct.

(2) A sufficient number of copies of the estimate must be prepared and submitted that there are copies on file in the office of the commission for inspection by the public.

(3) This section does not apply to a local government entity that has adopted the alternative accounting method provided for in Title 7, chapter 6, part 6.

History: En. Sec. 105, Ch. 152, L. 1917; re-en. Sec. 5502, R.C.M. 1921; amd. Sec. 17, Ch. 31, L. 1923; amd. Sec. 2, Ch. 173, L. 1925; re-en. Sec. 5502, R.C.M. 1935; amd. Sec. 1, Ch. 99, L. 1941; R.C.M. 1947, 11-3318(part); amd. Sec. 8, Ch. 430, L. 1995.

Compiler's Comments

1995 Amendment: Chapter 430 inserted (3) providing exception for local government entity that has adopted alternative accounting method provided in Title 7, chapter 6, part 6; and made minor changes in style. Amendment effective April 13, 1995.

7-3-4372. Procedure to enact appropriation ordinance — exception. (1) Upon receipt of the estimate, the commission shall prepare an appropriation ordinance in the form that may be prescribed by ordinance or resolution. Before finally acting upon the tentative appropriation, the commission shall fix a time and place for holding public hearing upon the tentative appropriation and shall give public notice of the hearing. Following the public hearings and before its final passage, the appropriation ordinance must be published with a parallel comparison with the recommendation of the city manager. The commission may not pass the appropriation ordinance until 10 days after its publication or before the second Monday in August.

(2) If, at the beginning of the term of office of the first commission elected under the provisions of this part and part 44, the appropriations for the expenditures of the municipal government for the current fiscal year have been made, the commission may by ordinance revise, repeal, or change the appropriations and make additional appropriations.

(3) This section does not apply to a local government entity that has adopted the alternative accounting method provided for in Title 7, chapter 6, part 6.

History: (1)En. Sec. 106, Ch. 152, L. 1917; re-en. Sec. 5503, R.C.M. 1921; amd. Sec. 3, Ch. 173, L. 1925; re-en. Sec. 5503, R.C.M. 1935; amd. Sec. 2, Ch. 99, L. 1941; Sec. 11-3319, R.C.M. 1947; (2)En. Sec. 107, Ch. 152, L. 1917; re-en. Sec. 5504, R.C.M. 1921; re-en. Sec. 5504, R.C.M. 1935; Sec. 11-3320, R.C.M. 1947; R.C.M. 1947, 11-3319, 11-3320; amd. Sec. 9, Ch. 430, L. 1995.

Compiler's Comments

1995 Amendment: Chapter 430 inserted (3) providing exception for local government entity that has adopted alternative accounting method provided in Title 7, chapter 6, part 6; and made minor changes in style. Amendment effective April 13, 1995.

7-3-4373. Financial administration. (1) Upon request of the city manager, the commission may transfer any part of an unencumbered balance of an appropriation to a purpose or object for which the appropriation for the current year has proved insufficient or may authorize a transfer to be made between items appropriated to the same office or department.

(2) At the close of each fiscal year, the unencumbered balance of each appropriation shall revert to the respective fund from which it was appropriated and shall be subject to future appropriations.

(3) Any accruing revenue of the municipality not appropriated as hereinbefore provided and any balance at any time remaining after the purpose of the appropriation shall have been satisfied or abandoned may from time to time be appropriated by the commission to such uses as will not conflict with any uses for which specifically such revenues accrued.

(4) No money shall be drawn from the treasury of the municipality, nor shall any obligation for the expenditure of money be incurred except pursuant to the appropriation made by the commission.

(5) All fees and money received or collected by officers and employees shall be paid into the city treasury.

History: (1)En. Sec. 108, Ch. 152, L. 1917; re-en. Sec. 5505, R.C.M. 1921; re-en. Sec. 5505, R.C.M. 1935; Sec. 11-3321, R.C.M. 1947; (2) thru (4)En. Sec. 109, Ch. 152, L. 1917; re-en. Sec. 5506, R.C.M. 1921; re-en. Sec. 5506, R.C.M. 1935; Sec. 11-3322, R.C.M. 1947; (5)En. Sec. 110, Ch. 152, L. 1917; re-en. Sec. 5507, R.C.M. 1921; amd. Sec. 18, Ch. 31, L. 1923; amd. Sec. 4, Ch. 173, L. 1925; re-en. Sec. 5507, R.C.M. 1935; Sec. 11-3323, R.C.M. 1947; R.C.M. 1947, 11-3321, 11-3322, 11-3323(part).

7-3-4374. Details of public advertising or publication. All public advertising or publication mentioned as being necessary under the provisions of this part or part 44 shall be in a daily newspaper of general circulation within the municipality if there be such; otherwise, in a weekly newspaper published therein, and shall be done by contract, or in a journal published by the municipality, as may be determined by ordinance. If such contract shall be with a newspaper, it shall be entered into only after opportunity has been given for competition under such rules as the commission may establish and for a term not longer than 1 year.

History: En. Sec. 70, Ch. 152, L. 1917; re-en. Sec. 5468, R.C.M. 1921; re-en. Sec. 5468, R.C.M. 1935; R.C.M. 1947, 11-3269.

Part 44

Municipal Commission-Manager Government Continued

7-3-4401. Administrative departments. (1) The following administrative departments are hereby established:

(a) department of law;
(b) department of public service;
(c) department of public welfare;
(d) department of public safety;
(e) department of finance.

(2) The commission may by ordinance discontinue any or several departments and determine, combine, and distribute the functions and duties of these departments and subdivisions thereof.

History: En. Sec. 61, Ch. 152, L. 1917; re-en. Sec. 5459, R.C.M. 1921; re-en. Sec. 5459, R.C.M. 1935; R.C.M. 1947, 11-3260.

7-3-4402. Appointment of department directors. The city manager shall appoint a director for each department, as specified herein or as specified by ordinance of the commission, who shall serve until removed by the city manager or until his successor is appointed and has qualified.

History: En. Sec. 62, Ch. 152, L. 1917; re-en. Sec. 5460, R.C.M. 1921; re-en. Sec. 5460, R.C.M. 1935; R.C.M. 1947, 11-3261(part).

7-3-4403. Role of department director. Each director shall conduct the affairs of his department in accordance with the rules made by the city manager and shall be responsible for the conduct of the officers and employees of his department, for the performance of its business, and for the custody and preservation of the books, records, papers, and property under its control. Subject to the supervision and control of the city manager in all matters, the director of each department shall manage the department.

History: En. Sec. 62, Ch. 152, L. 1917; re-en. Sec. 5460, R.C.M. 1921; re-en. Sec. 5460, R.C.M. 1935; R.C.M. 1947, 11-3261(part).

7-3-4404. Appointment of boards. The commission may appoint a municipal plan board and, upon the request of the city manager, shall appoint advisory boards. The members of such boards shall serve without compensation, and their duty shall be to consult and advise with the various departments. The duties and powers thus created shall be prescribed by ordinance.

History: En. Sec. 63, Ch. 152, L. 1917; re-en. Sec. 5461, R.C.M. 1921; re-en. Sec. 5461, R.C.M. 1935; R.C.M. 1947, 11-3262.

7-3-4405. Establishment of civil service board. (1) The commission may appoint three electors of the municipality as a civil service board, with one to serve for 2 years, one for 4 years, and one for 6 years, and to take office on January 1 after the municipality comes under the provisions of this part and part 43 or as soon thereafter as appointed and qualified. Thereafter members of the civil service board shall be appointed to serve for 6 years and until their successors have been appointed and have qualified. The commission may remove any member of the board upon stating in writing the reasons for removal and allowing him an opportunity to be heard in his own defense. Any vacancy shall be filled by the commission for the unexpired term.

(2) Members of the board shall not hold any other public office.

(3) It is intended hereby that the establishment of a civil service board shall be permissive and not mandatory. If appointed the board may be abolished at any time upon resolution to that effect by the commission; and thereafter any civil service board appointed under the provisions of this part shall cease to exist, but so long as any such civil service board shall exist, its operations and proceedings shall be controlled as provided in this part.

(4) The salaries of the board and its employees shall be determined by the commission, and a sufficient sum shall be appropriated each year to carry out the civil service provisions of this part.

History: (1) thru (3)En. Sec. 73, Ch. 152, L. 1917; re-en. Sec. 5471, R.C.M. 1921; amd. Sec. 15, Ch. 31, L. 1923; re-en. Sec. 5471, R.C.M. 1935; Sec. 11-3272, R.C.M. 1947; (4)En. Sec. 86, Ch. 152, L. 1917; re-en. Sec. 5484, R.C.M. 1921; re-en. Sec. 5484, R.C.M. 1935; Sec. 11-3285, R.C.M. 1947; R.C.M. 1947, 11-3272(part), 11-3285.

7-3-4406. Organization of board. Immediately after appointment, the board shall organize by electing one of its members chairman. The board shall appoint a chief examiner, who shall also act as secretary. The board may appoint such other subordinates as may be provided for by appropriation.

History: **En. Sec. 73, Ch. 152, L. 1917; re-en. Sec. 5471, R.C.M. 1921; amd. Sec. 15, Ch. 31, L. 1923; re-en. Sec. 5471, R.C.M. 1935; R.C.M. 1947, 11-3272(part).**

7-3-4407. Classification of civil service. (1) The civil service of a municipality is hereby divided into the unclassified and the classified service.

(2) The unclassified service shall include:

(a) all officers elected by the people;

(b) the city manager;

(c) the heads of departments and heads of divisions of departments and members of appointive boards;

(d) the deputies and secretaries of the city manager and one assistant or deputy and one secretary for each department and the clerk of the commission.

(3) (a) The classified service shall comprise all positions not specifically included in this section in the unclassified service. There shall be in the classified service three classes, to be known as the competitive class, the noncompetitive class, and the labor class.

(b) The competitive class shall include all positions and employment for which it is practicable to determine the merit and fitness of applicants by competitive examination.

(c) The noncompetitive class shall consist of all positions and employment requiring peculiar and exceptional qualifications of a scientific, managerial, professional, or educational character. No competitive examinations will be given for these positions, but the past achievements of the applicant will be considered.

(d) The labor class shall include ordinary unskilled labor which is employed by the year.

History: **En. Sec. 74, Ch. 152, L. 1917; re-en. Sec. 5472, R.C.M. 1921; re-en. Sec. 5472, R.C.M. 1935; R.C.M. 1947, 11-3273.**

Cross-References

Veterans' public employment preference, Title 39, ch. 29.

Handicapped persons' public employment preference, Title 39, ch. 30.

7-3-4408. Role of civil service board. (1) The board, subject to the approval of the commission, shall adopt, amend, and enforce a code of rules providing for appointment and employment in all positions in the classified service, based on merit, efficiency, character, and industry, which shall have the force and effect of law and shall make investigations concerning the enforcement and effect of this part and part 43 and of the rules adopted. It shall make an annual report to the commission.

(2) The board shall provide for promotion to all positions in the classified service based on records of merit, efficiency, character, conduct, and seniority.

History: **(1)En. Sec. 75, Ch. 152, L. 1917; re-en. Sec. 5473, R.C.M. 1921; re-en. Sec. 5473, R.C.M. 1935; Sec. 11-3274, R.C.M. 1947; (2)En. Sec. 77, Ch. 152, L. 1917; re-en. Sec. 5475, R.C.M. 1921; re-en. Sec. 5475, R.C.M. 1935; Sec. 11-3276, R.C.M. 1947; R.C.M. 1947, 11-3274, 11-3276.**

7-3-4409. Role of chief examiner. The chief examiner shall be the employment officer of all municipal employees coming under the classified service. He shall provide examinations in accordance with the regulations of the board and maintain lists of eligibles of each class of the service of those meeting the requirements of said regulations. Positions in the classified service shall be filled by him from such eligible lists upon requisition from and after consultation with the city manager. As positions are filled, the employment officer shall certify the fact, by proper and prescribed form, to the director of finance and the director of the department in which the vacancy exists.

History: **En. Sec. 76, Ch. 152, L. 1917; re-en. Sec. 5474, R.C.M. 1921; re-en. Sec. 5474, R.C.M. 1935; R.C.M. 1947, 11-3275.**

7-3-4410. Probationary period. An appointment or promotion shall not be deemed complete until a period of probation, not to exceed 6 months, has elapsed; and a probationer may be discharged or reduced at any time within the period of 6 months upon the recommendation of the head of the department in which said probationer is employed, with the approval of the majority of the board.

History: **En. Sec. 78, Ch. 152, L. 1917; re-en. Sec. 5476, R.C.M. 1921; re-en. Sec. 5476, R.C.M. 1935; R.C.M. 1947, 11-3277.**

7-3-4411. Procedure for discharge, demotion, or suspension of employee. (1) An employee shall not be discharged or reduced in rank or compensation until he has been presented with the reasons for such discharge or reduction, specifically stated in writing, and has been given an opportunity to be heard in his own defense. The reason for such discharge or reduction and any reply in writing thereto by such employee shall be filed with the board.

(2) Any employee of any department in the municipality in the classified service who is suspended, reduced in rank, or dismissed from a department by the director of that department or the city manager may appeal from the decision of such officer to the civil service board, and such board shall define the manner, time, and place in which such appeal shall be heard. The judgment of such board shall be final.

History: **(1)En. Sec. 79, Ch. 152, L. 1917; re-en. Sec. 5477, R.C.M. 1921; re-en. Sec. 5477, R.C.M. 1935; Sec. 11-3278, R.C.M. 1947; (2)En. Sec. 80, Ch. 152, L. 1917; re-en. Sec. 5478, R.C.M. 1921; re-en. Sec. 5478, R.C.M. 1935; Sec. 11-3279, R.C.M. 1947; R.C.M. 1947, 11-3278, 11-3279.**

7-3-4412. Retention of existing positions. Any person in the employ of a municipality holding a position in the classified service at the time that the municipality comes under the provisions of this part and part 43 shall, unless his position be abolished, retain the same until discharged, reduced, promoted, or transferred in accordance herewith.

History: **En. Sec. 81, Ch. 152, L. 1917; re-en. Sec. 5479, R.C.M. 1921; re-en. Sec. 5479, R.C.M. 1935; R.C.M. 1947, 11-3280.**

7-3-4413. Certification required to receive salary. The director of finance or other public disbursing officer shall not pay any salary or compensation for services to any person holding a position in the classified service unless the payroll or account for such salary or compensation shall bear the certificate of the board, by its secretary, that the persons named therein have been appointed or employed and are performing service in accordance with the provisions of this part and part 43 or the rules established thereunder.

History: **En. Sec. 82, Ch. 152, L. 1917; re-en. Sec. 5480, R.C.M. 1921; re-en. Sec. 5480, R.C.M. 1935; R.C.M. 1947, 11-3281.**

7-3-4414. Investigatory powers of civil service board. In any investigation conducted by the board, it shall have the power to subpoena and require the attendance of witnesses and the production thereby of books and papers pertinent to the investigation and to administer oaths to such witnesses.

History: **En. Sec. 83, Ch. 152, L. 1917; re-en. Sec. 5481, R.C.M. 1921; re-en. Sec. 5481, R.C.M. 1935; R.C.M. 1947, 11-3282.**

Cross-References

Witnesses and subpoenas, Title 26, ch. 2.

7-3-4415. Prohibition on discrimination in employment. No person in the classified service or seeking admission thereto may be appointed, reduced, removed, or in any way favored or discriminated against because of political opinions or affiliations or because of race, color, creed, or religion.

History: **En. Sec. 84, Ch. 152, L. 1917; re-en. Sec. 5482, R.C.M. 1921; re-en. Sec. 5482, R.C.M. 1935; amd. Sec. 1, Ch. 188, L. 1975; amd. Sec. 1, Ch. 38, L. 1977; R.C.M. 1947, 11-3283.**

Cross-References

Governmental code of fair practices, Title 2, ch. 2.

Illegal discrimination, Title 49, ch. 2.

7-3-4416. Violation of civil service provisions. The board, subject to the approval of the commission, shall by ordinance determine the penalties for the violation of the civil service provisions of this part.

History: **En. Sec. 85, Ch. 152, L. 1917; re-en. Sec. 5483, R.C.M. 1921; re-en. Sec. 5483, R.C.M. 1935; R.C.M. 1947, 11-3284.**

Cross-References

Penalty when none specified, 46-18-212.

7-3-4417. Fixing compensation. (1) The commission shall fix, by annual salary ordinance, the salary or compensation of the city manager, the heads of the departments, and its own employees.

(2) The city manager shall fix the number and salaries or compensation of all other officers and employees.

(3) In cities where there is a civil service board as provided for in this part, the salary or compensation so fixed shall be uniform for like service in each grade of the service as the same shall be graded or classified by the city manager in accordance with the rules adopted by the civil service board. All such salaries and rates of pay shall be reported to the secretary of the civil service board.

History: **En. Sec. 110, Ch. 152, L. 1917; re-en. Sec. 5507, R.C.M. 1921; amd. Sec. 18, Ch. 31, L. 1923; amd. Sec. 4, Ch. 173, L. 1925; re-en. Sec. 5507, R.C.M. 1935; R.C.M. 1947, 11-3323(part).**

7-3-4418. Power to establish eight-hour day. The commission shall have the power to provide by ordinance that on any public work carried on by the municipality, whether done by contract or otherwise, not to exceed 8 hours shall constitute a day's work.

History: **En. Sec. 115, Ch. 152, L. 1917; re-en. Sec. 5512, R.C.M. 1921; re-en. Sec. 5512, R.C.M. 1935; R.C.M. 1947, 11-3328.**

Cross-References

Hours of work, Art. XII, sec. 2(2), Mont. Const.; 39-3-405.

Hours of work for municipal employees, 39-4-107.

7-3-4419 through 7-3-4430 reserved.

7-3-4431. Department of finance. (1) The duties of the director of finance shall include the keeping and supervision of all accounts and the custody of all public money of the municipality; the purchase, storage, and distribution of supplies needed by the various departments; the making and collection of special assessments; the issuance of licenses; the collection of license fees and taxes; and such other duties as the commission may by ordinance require.

(2) He shall install and have supervision over the accounts of all the departments and offices of the municipality. Whenever practicable the books of financial accounts shall be kept in the office of the department of finance. He shall require daily departmental reports of money receipts and the disposition thereof and shall require of each, in such form as may be prescribed, current financial and operating statements exhibiting each transaction and the cost thereof. Upon the death, resignation, removal, or expiration of the term of any officer, he shall examine the accounts of such officer and report his findings to the city manager.

(3) He shall have charge of the preparation and certification of all special assessments for public improvements, the mailing of notices of such assessments to property owners and purchasers of property under contracts for deed and all other duties connected therewith, the collection of such assessments as are payable directly to the municipality, and the preparation and certification of all unpaid assessments to the county treasurer for collection. He shall issue all licenses and collect all fees therefor and shall pay the same into the treasury in the manner provided by ordinance.

(4) The director of finance shall be the custodian of all public money of the municipality and all other public money coming into his hands. He shall keep and preserve such money in the place or places determined by ordinance or by the provisions of any law applicable thereto. Except as otherwise provided in this part or part 43, he shall collect, receive, and disburse all public money of the municipality upon warrant and shall also receive and disburse all other public money coming into his hands in pursuance of such regulations as may be prescribed by the authorities having lawful control over such funds.

History: En. Sec. 68, Ch. 152, L. 1917; re-en. Sec. 5466, R.C.M. 1921; amd. Sec. 13, Ch. 31, L. 1923; re-en. Sec. 5466, R.C.M. 1935; R.C.M. 1947, 11-3267(1) thru (3), (5), (7); amd. Sec. 4, Ch. 526, L. 1983.

7-3-4432. Accounting procedures. Accounting procedure shall be devised and maintained for the municipality, adequate to record in detail all transactions affecting the acquisition, custodianship, and disposition of values, including cash receipts and disbursements. The recorded facts shall be presented periodically to officials and to the public in such summaries and analytical schedules in detailed support thereof as may be necessary to show the full effect of such transactions for each fiscal year upon the finances of the municipality and in relation to each department of the municipal government, including distinct summaries and schedules for each publicly owned and operated utility.

History: En. Sec. 68, Ch. 152, L. 1917; re-en. Sec. 5466, R.C.M. 1921; amd. Sec. 13, Ch. 31, L. 1923; re-en. Sec. 5466, R.C.M. 1935; R.C.M. 1947, 11-3267(4).

7-3-4433. Claims and issuance of warrants. No warrant for the payment of any claim shall be issued unless such claim shall be evidenced by a voucher approved by the head of the department for which the indebtedness was incurred and countersigned by the city manager. Before issuing such voucher, the supplies and materials delivered or work done shall be duly inspected and certified to by the head of the proper department or office or by a person designated by him. The head of each department or office shall require proper time reports from all services rendered, to be certified by those having cognizance thereof, to serve as a basis for the preparation of payroll vouchers. Each director of a department and his surety shall be liable to the municipality for all loss or damage sustained by the municipality, by reason of the negligent or corrupt approval of any claim against the municipality in his department. Prior to the drawing of a warrant for the payment of any voucher or claim, the director of finance may at his discretion cause an investigation or inspection to be made by a person designated by him and shall have power to summon persons and examine them under oath or affirmation, which oath or affirmation he may administer.

History: En. Sec. 68, Ch. 152, L. 1917; re-en. Sec. 5466, R.C.M. 1921; amd. Sec. 13, Ch. 31, L. 1923; re-en. Sec. 5466, R.C.M. 1935; R.C.M. 1947, 11-3267(6).

7-3-4434. Purchase and sale of supplies and property. (1) The director of finance or city manager shall, in manner provided by ordinance, purchase all supplies for the municipality and sell all real and personal property of the municipality not needed or unsuitable for public use or that may have been condemned as useless by the director of a department. He shall have charge of such storerooms and storehouses of the municipality as may be provided by ordinance, in which shall be stored all supplies and materials purchased by the municipality and not delivered to the various departments.

(2) He shall inspect all supplies delivered to determine quality and quantity and conformance with specifications, and no voucher shall be honored unless the accompanying invoice shall be endorsed as approved.

(3) He may require from the director of each department, at such times as contracts for supplies are to be let, a requisition for the quantity and kind of supplies to be paid for from the appropriations of the department.

(4) Upon certification that funds are available in the proper appropriations, such goods shall be purchased and shall be paid for from funds in the proper department for that purpose. However, this procedure shall not prejudice the director of finance or city manager from purchasing goods for cash to the credit of the stores account to be furnished the several departments on requisition; goods so furnished to be paid for by the department furnished therewith by warrant made payable to the stores account.

(5) He shall not furnish any supplies to or purchase any supplies for any department unless there be to the credit of such department an available appropriation balance in excess of all unpaid obligations sufficient to pay for such supplies.

(6) Before making any purchase or sale, the director of finance or city manager shall give opportunity for competition, all proposals to be upon precise specifications and under such rules as the commission shall establish. Each order of purchase or sale, to be approved and countersigned by the city manager or his deputy.

(7) In cases of emergency, purchases may be made without competition if a sufficient appropriation has theretofore been made against which purchases may lawfully be charged. In such cases, a copy of the order issued shall be filed with the director of finance, together with a certificate by the head of the

department stating the facts of the emergency. A copy of this certificate shall be attached to and filed with the voucher covering payment for the supplies. The director of finance shall have such assistants and force of office employees as may be necessary to properly carry out his duties under the provisions of this part and part 43. If it is found desirable, he may divide his office into divisions presided over by the following officers: accountant, treasurer, and purchasing agent.

History: En. Sec. 68, Ch. 152, L. 1917; re-en. Sec. 5466, R.C.M. 1921; amd. Sec. 13, Ch. 31, L. 1923; re-en. Sec. 5466, R.C.M. 1935; R.C.M. 1947, 11-3267(8) thru (13).

7-3-4435. Approval required for certain contracts. No contract involving an expenditure of more than $250 for material or supplies shall be awarded except upon the approval of the city manager and the commission.

History: En. Sec. 71, Ch. 152, L. 1917; re-en. Sec. 5469, R.C.M. 1921; re-en. Sec. 5469, R.C.M. 1935; R.C.M. 1947, 11-3270.

7-3-4436. Sinking fund trustees. (1) The members of the commission, the city manager, and the director of finance shall constitute the sinking fund trustees. The mayor shall be the president and the director of finance shall be the secretary of the trustees of the sinking fund.

(2) The trustees of the sinking fund shall manage and control the sinking fund in the manner provided by laws of Montana or by ordinance.

History: En. Sec. 69, Ch. 152, L. 1917; re-en. Sec. 5467, R.C.M. 1921; re-en. Sec. 5467, R.C.M. 1935; R.C.M. 1947, 11-3268.

7-3-4437 through 7-3-4440 reserved.

7-3-4441. Department of public service. Subject to the control and supervision of the city manager in all matters, the director of public service shall manage and have charge of the construction, improvement, repair, and maintenance of streets, sidewalks, alleys, lanes, bridges, viaducts, and other public highways; of sewers, drains, ditches, culverts, canals, streams, and watercourses; of boulevards, squares, and other public places and grounds belonging to the municipality or dedicated to public use, except parks and playgrounds. He shall manage market houses, sewage disposal plants and farms, and all public utilities of the municipality. He shall have charge of the enforcement of all obligations of privately owned or operated public utilities enforceable by the municipality. He shall have charge of the making and preservation of all surveys, maps, plans, drawings, and estimates for public work; the cleaning, sprinkling, and lighting of streets and public places; the collection and disposal of waste; and the preservation of contracts, papers, plans, tools, and appliances belonging to the municipality and pertaining to the department.

History: En. Sec. 65, Ch. 152, L. 1917; re-en. Sec. 5463, R.C.M. 1921; re-en. Sec. 5463, R.C.M. 1935; R.C.M. 1947, 11-3264.

7-3-4442. Local improvements. (1) The commission shall have the power by ordinance to provide for:

(a) the construction, reconstruction, repair, and maintenance, by contract or directly by the employment of labor, of all things in the nature of local improvements; and

(b) the payment of any part of the cost of any such improvement by levying and collecting special assessments upon abutting, adjacent, and contiguous or other specially benefited property, as provided by general law.

(2) Whenever the payments for such improvements are to extend over a period of years and are to be paid for in installments, the proceedings and all things done in connection with such improvements are to be done in strict conformity with the provisions of parts 41 and 42 of chapter 12.

History: En. Sec. 87, Ch. 152, L. 1917; re-en. Sec. 5485, R.C.M. 1921; re-en. Sec. 5485, R.C.M. 1935; R.C.M. 1947, 11-3301.

7-3-4443. Utility connections. (1) The director of public service shall have authority to compel the making of sewer, water, gas, and other connections whenever, in view of the contemplated street improvements or as a sanitary regulation, sewer, water, gas, or other connections should in his judgment be constructed.

(2) He shall cause written notice of his determination thereof to be given to the owner of each lot or parcel of land to which such connections are to be made. The notice shall state the number and character of connections required. Such notice shall be served by a person designated by the director of public service, in the manner provided for the service of summons in civil actions. Nonresidents of the municipality or persons who cannot be found may be served by one publication of such notice in a daily newspaper of general circulation in the municipality if such there be and, if not, by one publication in a weekly newspaper. The notice shall state the time within which such connections shall be constructed, and if they be not constructed within the time, the work may be done by the municipality and the cost thereof, together with a penalty of 5%, assessed against the lots and lands for which such connections are made; provided that the city commission may in its discretion order and direct that the cost of making any such connection by the municipality may be assessed without penalty and may be paid in annual installments over a period of not to exceed 8 years, together with interest thereon not to exceed 6% per annum payable annually on the deferred payments. Said assessments shall be certified and collected as other assessments for street improvements. The actual work of making such connections shall be done under such regulations as are provided for by ordinance.

History: En. Sec. 88, Ch. 152, L. 1917; re-en. Sec. 5486, R.C.M. 1921; re-en. Sec. 5486, R.C.M. 1935; amd. Sec. 1, Ch. 45, L. 1939; R.C.M. 1947, 11-3302.

Cross-References

Municipal utility regulation, Title 69, ch. 7.

7-3-4444. Supervision of plats. (1) The director of public service shall be the supervisor of plats of the municipality. He shall see that the regulations governing the platting of all lands require all streets and alleys to be of proper width and to be coterminous with the adjoining streets and alleys and that all other regulations are conformed with. Whenever he shall deem it expedient to plat any portion of the territory within the corporate limits in which the necessary or convenient streets and alleys have not already been accepted by the municipality so as to become public streets or alleys or when any person plats any land within the corporate limits or within 3 miles thereof, the supervisor of plats shall, if such plats are in accordance with the regulations prescribed therefor, endorse his written approval thereon.

(2) No plat subdividing lands within the corporate limits or within 3 miles thereof shall be entitled to record in the recorder's office of the county without such written approval so endorsed thereon.

History: **En. Sec. 91, Ch. 152, L. 1917; re-en. Sec. 5489, R.C.M. 1921; re-en. Sec. 5489, R.C.M. 1935; R.C.M. 1947, 11-3305.**

7-3-4445. Subdivided lands. Subdivisions in the municipality must conform to the provisions of Title 76, chapter 3.

History: **En. Sec. 89, Ch. 152, L. 1917; re-en. Sec. 5487, R.C.M. 1921; amd. Sec. 16, Ch. 31, L. 1923; re-en. Sec. 5487, R.C.M. 1935; R.C.M. 1947, 11-3303; amd. Sec. 26, Ch. 262, L. 1979.**

7-3-4446. Acceptance of streets or alleys. (1) No streets or alleys except those laid down on such plat and bearing the approval of the supervisor of plats, as hereinbefore provided, shall subsequently in any way be accepted as public streets or alleys by the municipality or shall any public funds be expended in the repair or improvement of streets or alleys subsequently laid out and not on such plat. This restriction shall not apply to a street or alley laid out by the municipality or to streets, alleys, or public grounds laid out on a plat by or with the approval of the supervisor of plats.

(2) No street or alley hereafter dedicated to public use by the proprietor of ground in the municipality shall be deemed a public street or alley or under the care or control of the commission unless the dedication be accepted and confirmed by ordinance passed for such purpose or unless the provisions hereof relating to subdivisions shall have been complied with.

History: **(1)En. Sec. 92, Ch. 152, L. 1917; re-en. Sec. 5490, R.C.M. 1921; re-en. Sec. 5490, R.C.M. 1935; Sec. 11-3306, R.C.M. 1947; (2)En. Sec. 95, Ch. 152, L. 1917; re-en. Sec. 5493, R.C.M. 1921; re-en. Sec. 5493, R.C.M. 1935; Sec. 11-3309, R.C.M. 1947; R.C.M. 1947, 11-3306, 11-3309.**

7-3-4447. Supervision of public places. (1) The commission shall provide by ordinance for the care, supervision, control, and improvement of public highways, streets, avenues, alleys, sidewalks, public grounds, bridges, aqueducts, and viaducts within the municipality and shall cause them to be kept open, in repair, and free from nuisance.

(2) When it deems it necessary, the commission may cause any street, alley, or public highway to be opened, straightened, altered, diverted, narrowed, widened, or vacated.

History: **(1)En. Sec. 93, Ch. 152, L. 1917; re-en. Sec. 5491, R.C.M. 1921; re-en. Sec. 5491, R.C.M. 1935; Sec. 11-3307, R.C.M. 1947; (2)En. Sec. 94, Ch. 152, L. 1917; re-en. Sec. 5492, R.C.M. 1921; re-en. Sec. 5492, R.C.M. 1935; Sec. 11-3308, R.C.M. 1947; R.C.M. 1947, 11-3307, 11-3308.**

7-3-4448. Vacating or changing name of street. (1) The commission, in vacating any street or part of a street or changing the name of any street, may include in one ordinance the change of name or the vacation or narrowing of more than one street, alley, or avenue. Before vacating any street or part thereof or narrowing any street, the commission shall first pass a resolution declaring its intention to do so.

(2) The city manager shall serve notice of the resolution, in the manner that service of summons is required to be made in civil actions, upon all persons who are owners or purchasers under contracts for deed of property that abuts upon the portion of the street affected by the proposed vacation or narrowing

and shall publish notice once in one daily newspaper of general circulation in the municipality if there is one or if not, once in one weekly newspaper of like circulation. The notice shall state the time and place at which objections will be heard.

(3) Unless at least 51% of the affected property owners object to the proposed vacation or narrowing, the commission may by ordinance declare such vacation or narrowing. The order of the commission vacating or narrowing a street or alley which has been dedicated to public use by the proprietor, to the extent that it is vacated or narrowed, operates as a revocation of the acceptance thereof by the commission, but the right-of-way and easement therein of any lot owner is not impaired thereby.

History: En. Sec. 96, Ch. 152, L. 1917; re-en. Sec. 5494, R.C.M. 1921; re-en. Sec. 5494, R.C.M. 1935; R.C.M. 1947, 11-3310; amd. Sec. 27, Ch. 262, L. 1979; amd. Sec. 5, Ch. 526, L. 1983.

7-3-4449. Grant of right to use or occupy public places. The commission shall have all powers to grant rights to occupy or use the streets, highways, bridges, or public places in the municipality that now are or hereafter may be granted to municipalities by the constitution or laws of Montana. Every ordinance or resolution passed by the commission granting the right to occupy or use streets, highways, or public places of municipalities shall be complete in the form in which it is finally passed and remain on file with the commission for inspection by the public for at least 1 week before the final adoption or passage thereof.

History: En. Sec. 98, Ch. 152, L. 1917; amd. Sec. 3, Ch. 44, L. 1919; re-en. Sec. 5496, R.C.M. 1921; re-en. Sec. 5496, R.C.M. 1935; R.C.M. 1947, 11-3312.

7-3-4450. Renewal of franchises. The commission may by ordinance renew any grant for the construction or operation of any utility, at its expiration, subject to petition and referendum as hereinbefore provided.

History: En. Sec. 99, Ch. 152, L. 1917; re-en. Sec. 5497, R.C.M. 1921; re-en. Sec. 5497, R.C.M. 1935; R.C.M. 1947, 11-3313.

7-3-4451. Prohibition on exclusive grant or franchise. No exclusive grant or renewal shall ever be granted, and no grant shall be renewed before 2 years prior to its expiration.

History: En. Sec. 100, Ch. 152, L. 1917; amd. Sec. 5, Ch. 44, L. 1919; re-en. Sec. 5498, R.C.M. 1921; re-en. Sec. 5498, R.C.M. 1935; R.C.M. 1947, 11-3314.

7-3-4452. Grant to operate public utility. (1) The commission shall, in any ordinance granting or renewing any grant to construct and operate a public utility, prescribe the manner in which the streets and public grounds shall be used and occupied.

(2) The commission may by ordinance grant to any individual, company, or corporation operating a public utility the right to extend the appliances and service of such utility outside of the territory as designated by the franchise, subject to petition and referendum as hereinbefore stated. All such extensions shall become part of the aggregate property of the utility and shall be subject to all the obligations and reserved rights in favor of the municipality applicable to the property of the utility by virtue of the ordinance providing for its construction and operation. The right to use and maintain any such extension shall expire with the original grant of the utility to which the extension was made or any renewal thereof.

(3) No consent of the owner of property abutting on any highway or public ground shall be required for the construction, extension, and maintenance or operation of any public utility by original grant or renewal unless such public utility is of such character that its construction or operation is an additional burden upon the rights of the property owners in such highways or public grounds.

History: (1)En. Sec. 101, Ch. 152, L. 1917; amd. Sec. 5, Ch. 44, L. 1919; re-en. Sec. 5499, R.C.M. 1921; re-en. Sec. 5499, R.C.M. 1935; Sec. 11-3315, R.C.M. 1947; (2)En. Sec. 103, Ch. 152, L. 1917; re-en. Sec. 5500, R.C.M. 1921; re-en. Sec. 5500, R.C.M. 1935; Sec. 11-3316, R.C.M. 1947; (3)En. Sec. 104, Ch. 152, L. 1917; re-en. Sec. 5501, R.C.M. 1921; re-en. Sec. 5501, R.C.M. 1935; Sec. 11-3317, R.C.M. 1947; R.C.M. 1947, 11-3315, 11-3316, 11-3317.

7-3-4453. Assessments for snow, ice, weed, and rubbish removal. The commission shall have the power to provide by ordinance for assessing against the abutting property the cost of removing from the sidewalks all accumulation of snow and ice and for assessing against the property the cost of cutting and removing therefrom nuisance weeds and rubbish.

History: En. Sec. 116, Ch. 152, L. 1917; re-en. Sec. 5513, R.C.M. 1921; re-en. Sec. 5513, R.C.M. 1935; R.C.M. 1947, 11-3329; amd. Sec. 25, Ch. 607, L. 1985.

Cross-References

County weed control, Title 7, ch. 22, part 21.

7-3-4454 through 7-3-4460 reserved.

7-3-4461. Department of law. (1) The head of the department of law shall be an attorney at law who has been admitted to practice in the state of Montana and shall be known as the city attorney.

(2) He shall be the legal adviser of and attorney and counsel for the municipality and for all the officers and departments thereof in matters relating to their official duties. He shall prosecute and defend all suits for and in behalf of the municipality and shall prepare all contracts, bonds, and other instruments in writing in which the municipality is concerned and shall endorse on each his approval of the form and correctness thereof. He shall have such other duties and authority as are now conferred upon the city attorney by existing laws.

(3) He shall have such number of assistants as the commission by ordinance may authorize.

History: En. Sec. 64, Ch. 152, L. 1917; re-en. Sec. 5462, R.C.M. 1921; re-en. Sec. 5462, R.C.M. 1935; R.C.M. 1947, 11-3263.

7-3-4462. Office of city judge. (1) In each municipality having a commission-manager form of government, a city judge shall be elected every 4 years in a nonpartisan election held in conjunction with the regularly scheduled municipal election. The city judge shall hold office for a term of 4 years.

(2) The qualifications to hold the office of city judge shall be set by ordinance by the commission. The ordinance shall be consistent with any rules adopted by the Montana supreme court on city judge qualifications.

(3) If a vacancy occurs in the office of city judge, the commission shall appoint a qualified individual to serve for the remainder of the term.

History: (1)En. Sec. 72, Ch. 152, L. 1917; re-en. Sec. 5470, R.C.M. 1921; amd. Sec. 14, Ch. 31, L. 1923; re-en. Sec. 5470, R.C.M. 1935; amd. Sec. 1, Ch. 219, L. 1977; Sec. 11-3271, R.C.M. 1947; (2)En. 11-3271.1 by Sec. 2, Ch. 219, L. 1977; Sec. 11-3271.1, R.C.M.

1947; (3)En. 11-3271.3 by Sec. 4, Ch. 219, L. 1977; Sec. 11-3271.3, R.C.M. 1947; R.C.M. 1947, 11-3271, 11-3271.1, 11-3271.3.

Cross-References

City Court, Title 3, ch. 11.

7-3-4463. Department of public welfare. (1) Subject to the supervision and control of the city manager in all matters, the director of public welfare shall manage all charitable, correctional, and reformatory institutions and agencies belonging to the municipality and the use of all recreational facilities of the municipality, including libraries, parks, and playgrounds. He shall have charge of the inspection and supervision of public amusements and entertainments. He shall enforce all laws, ordinances, and regulations relative to the preservation and promotion of the public health; the prevention and restriction of disease; the prevention, abatement, and suppression of nuisances; and the sanitary inspection and supervision of the production, transportation, storage, and sale of foodstuffs. He shall cause a complete and accurate system of vital statistics to be kept. In time of epidemic or threatened epidemic, he may enforce such quarantine regulations as are appropriate to the emergency. The director of public welfare shall provide for the study of and research into causes of poverty, delinquency, crime, disease, and other social problems in the community and shall, by means of lectures and exhibits, promote the education and understanding of the community in those matters which affect the public welfare.

(2) The health officer of the municipality shall be under the direction and control of the director of public welfare and shall enforce all ordinances and laws relating to health and shall perform all duties and have all powers provided by general law relative to the public health to be exercised in municipalities by health officers. Regulations affecting the public health additional to those established by general law and for the violation of which penalties are imposed shall be enacted by the commission and enforced as provided herein.

History: En. Sec. 66, Ch. 152, L. 1917; re-en. Sec. 5464, R.C.M. 1921; re-en. Sec. 5464, R.C.M. 1935; R.C.M. 1947, 11-3265.

Cross-References

Local boards of health, Title 50, ch. 2.

7-3-4464. Department of public safety. (1) Subject to the supervision and control of the city manager in all matters, the director of public safety shall be the executive head of the division of police and fire. He shall also be the chief administrative authority in all matters affecting the inspection and regulation of the erection, maintenance, repair, and occupancy of buildings as may be ordained by the commission or established by the general law of Montana. He shall also be charged with the enforcement of all laws and ordinances relating to weights and measures.

(2) Nothing herein shall affect, impair, restrict, or repeal any provisions of general law authorizing the levying of taxes to provide for firefighters, police, and sanitary police pension funds and to create and perpetuate boards of trustees for the administration of such funds.

History: En. Sec. 67, Ch. 152, L. 1917; re-en. Sec. 5465, R.C.M. 1921; amd. Sec. 12, Ch. 31, L. 1923; amd. Sec. 1, Ch. 173, L. 1925; re-en. Sec. 5465, R.C.M. 1935; amd. Sec. 1, Ch. 150, L. 1947; amd. Sec. 3, Ch. 489, L. 1977; R.C.M. 1947, 11-3266(1), (6).

Cross-References
Weights and measures, Title 30, ch. 12.
Building inspection, Title 50, ch. 60.

7-3-4465. Police department. (1) The chief of police shall have exclusive control of the stationing and transfer of all patrol officers and other officers and employees constituting the police force, under such rules as the director of public safety may prescribe. The police force shall be composed of a chief of police and such officers, patrol officers, and other employees as the city manager may determine. In case of riot, in event of emergency, or at time of elections or similar occasions, the director of public safety may appoint additional patrol officers and officers for temporary service, who need not be in the classified service.

(2) No person shall act as special policeman, special detective, or other special police officer for any purpose whatsoever except upon the written authority of the director of public safety. Such authority shall be exercised only under the direction and control of the chief of police and for a specified time.

(3) Section 7-4-4202(1) and (4), parts 2 and 41 of chapter 32, and chapters 9 and 19 of Title 19 shall in all respects be applicable to and govern the police departments of all cities and towns under the commission-manager form of government provided for herein.

History: En. Sec. 67, Ch. 152, L. 1917; re-en. Sec. 5465, R.C.M. 1921; amd. Sec. 12, Ch. 31, L. 1923; amd. Sec. 1, Ch. 173, L. 1925; re-en. Sec. 5465, R.C.M. 1935; amd. Sec. 1, Ch. 150, L. 1947; amd. Sec. 3, Ch. 489, L. 1977; R.C.M. 1947, 11-3266(part); amd. Sec. 1, Ch. 217, L. 1989.

7-3-4466. Fire department. (1) The fire chief shall have exclusive control of the stationing and transfer of all firefighters and other officers and employees constituting the fire force, under such rules as the director of public safety may prescribe. The fire force shall be composed of a chief and such other officers, firefighters, and employees as the city manager may from time to time determine. In case of riot, conflagration, or emergency, the director of public safety may appoint additional firefighters and other officers for temporary service, who need not be in the classified service.

(2) The provisions of part 41 of chapter 33 and chapter 18 of Title 19 shall in all respects be applicable to and govern fire departments of all cities and towns operating under the commission-manager plan of government.

History: En. Sec. 67, Ch. 152, L. 1917; re-en. Sec. 5465, R.C.M. 1921; amd. Sec. 12, Ch. 31, L. 1923; amd. Sec. 1, Ch. 173, L. 1925; re-en. Sec. 5465, R.C.M. 1935; amd. Sec. 1, Ch. 150, L. 1947; amd. Sec. 3, Ch. 489, L. 1977; R.C.M. 1947, 11-3266(part).

CHAPTER 4

OFFICERS AND EMPLOYEES

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7-4-2922. Repealed.
7-4-2923. Computation of mileage for reimbursement.

Part 30 — Offices of Sheriff, County Treasurer, County Auditor, Public Administrator, County Superintendent of Schools, and Clerk of District Court

7-4-3001. Office of sheriff.
7-4-3002. Office of county treasurer.
7-4-3003. Office of county auditor.
7-4-3004. Office of public administrator.
7-4-3005. Office of county superintendent of schools.
7-4-3006. Limitation on number of deputy district court clerks.
7-4-3007. Qualifications for office of county assessor — forfeiture of office.

Parts 31 through 40 reserved

Part 41 — Municipal Officers in General

7-4-4101. Officers of city of first class.
7-4-4102. Officers of city of second or third class.
7-4-4103. Officers of towns.
7-4-4104. General qualifications for municipal office.
7-4-4105. Authority to abolish appointive municipal offices.
7-4-4106. Authority to consolidate municipal offices.
7-4-4107. Commencement of term of office.
7-4-4108. Repealed.
7-4-4109. Official bond.
7-4-4110. Duties of officers not otherwise provided for.
7-4-4111. Determination of vacancy in municipal office.
7-4-4112. Filling of vacancy.
7-4-4113. Removal of appointed officer.
7-4-4114. Municipal executive officers.

Part 42 — Compensation of Municipal Officers and Employees

7-4-4201. Salary of officers.
7-4-4202. Minimum salary of chief of police.
7-4-4203 through 7-4-4210 reserved.
7-4-4211. Designation of person to receive decedent's warrants or paychecks — reissuance.

Part 43 — Office of Mayor

7-4-4301. Qualifications for mayor.
7-4-4302. Term of office.
7-4-4303. Powers of mayor related to municipal officers, personnel, and citizens.
7-4-4304. Effect of failure to obey call from mayor for assistance.
7-4-4305. Power to grant pardons.
7-4-4306. Extraterritorial powers.

Part 44 — Office of Alderman

7-4-4401. Qualifications for alderman.
7-4-4402. Term of office.
7-4-4403. Officers of city or town council.

Part 45 — Office of Municipal Clerk

7-4-4501. Duties of city clerk related to administration.
7-4-4502. Duties of city clerk related to city records and papers.
7-4-4503. City ordinance book.
7-4-4504 through 7-4-4510 reserved.
7-4-4511. Duties of town clerk related to administration.
7-4-4512. Duties of town clerk related to town records and papers.
7-4-4513. Town ordinance book.

Part 46 — Office of City Attorney

7-4-4601. Qualifications for city attorney.
7-4-4602. Appointment — term of office.
7-4-4603. Removal or suspension.
7-4-4604. Duties.
7-4-4605. Employment of special or additional counsel.
7-4-4606. Legal services for city of third class.

Part 47 — Office of City Treasurer

7-4-4701. Term of office for city treasurer.

Part 1
General Provisions

7-4-101. Filing of oath of office. Every oath of office, certified by the officer before whom the same was taken, must be filed within the time required by law, except when otherwise specially provided, as follows:

(1) in the office of the secretary of state for all officers whose authority is not limited to any particular county;

(2) in the office of the clerk of the respective county for all elected or appointed officers for any county, all officers whose duties are local or whose residence in any particular county is prescribed by law, and the clerks of the district courts.

History: En. Sec. 1014, Pol. C. 1895; re-en. Sec. 366, Rev. C. 1907; re-en. Sec. 434, R.C.M. 1921; Cal. Pol. C. Sec. 909; re-en. Sec. 434, R.C.M. 1935; amd. Sec. 1, Ch. 77, L. 1949; R.C.M. 1947, 59-417(part).

7-4-102. Office hours. (1) Unless otherwise provided by law, each officer shall keep the officer's office open for the transaction of business during the office hours determined by the governing body by resolution after a public hearing and only if consented to by any affected elected county officer each day except Saturdays and legal holidays.

(2) County and city treasurers may, in the interest of the safekeeping of funds, securities, and records under their control, close their offices during the period from noon to 1 p.m. every day.

(3) The governing body of a third-class city or town may establish days and times when municipal offices are open to conduct business.

History: En. Sec. 1134, Pol. C. 1895; re-en. Sec. 436, Rev. C. 1907; re-en. Sec. 453, R.C.M. 1921; Cal. Pol C. Sec. 1030; amd. Sec. 1, Ch. 5, L. 1931; re-en. Sec. 453, R.C.M. 1935; amd. Sec. 1, Ch. 22, L. 1951; amd. Sec. 1, Ch. 253, L. 1957; amd. Sec. 1, Ch. 2, L. 1961; amd. Sec. 1, Ch. 33, L. 1961; R.C.M. 1947, 59-510(2)(part); amd. Sec. 1, Ch. 2, Sp. L. June 1989; amd. Sec. 2, Ch. 216, L. 1995.

Compiler's Comments

1995 Amendment: Chapter 216 in (1), in first sentence after "business", substituted "during the office hours determined by the governing body by resolution after a public hearing and only if consented to by any affected elected county officer" for "continuously from 8 a.m. until 5 p.m." and deleted second sentence that read: "Every officer shall keep his office open at such other times as the accommodation of the public or the proper transaction of business requires"; in (3), at end, deleted "that are different from the days and times required by subsection (1)"; and made minor changes in style.

Cross-References

County offices, 7-4-2211.

Parts 2 through 4 reserved

Part 5
Local Government Employee Incentive Award Program

7-4-501. Establishment of program. A governing body may develop and administer an employee incentive award program to appropriately recognize and monetarily reward local government employees in a timely manner for suggestions or inventions that contribute to the efficiency, economy, or other improvement of local government by reducing costs of governmental operations.

History: En. Sec. 2, Ch. 87, L. 1991.

7-4-502. Definitions. As used in this part, the following definitions apply:

(1) "Agency" means any office, board, bureau, commission, or department operated by a local government.

(2) "Governing body" means the legislative authority of a local government.

(3) "Local government" means any city, town, county, consolidated city-county, or school district.

History: En. Sec. 1, Ch. 87, L. 1991.

7-4-503. Powers and duties of governing body. A governing body shall:

(1) adopt regulations to equitably administer the employee incentive award program;

(2) provide an opportunity for all employees to participate in the program;

(3) assist agencies in making incentive awards under the program;

(4) grant or deny incentive awards in consultation with the incentive awards advisory council if there is such a council;

(5) determine the amount of each incentive award;

(6) designate the source of funding for the awards; and

(7) hear appeals from employees on the operation of the program.

History: En. Sec. 3, Ch. 87, L. 1991.

7-4-504. Appointment and functions of advisory council — governing body as advisory council. (1) The governing body may appoint an incentive awards advisory council. Members of the advisory council must be selected from a diverse group to adequately represent employees.

(2) The advisory council shall meet regularly and consult with the governing body to review all proposed incentive awards and to recommend granting or rejecting proposed awards.

(3) The governing body may serve as the incentive awards advisory council in lieu of appointing a separate council.

History: En. Sec. 4, Ch. 87, L. 1991.

7-4-505. Eligibility for award. (1) Except as provided in subsection (2), an employee may be eligible for an incentive award if his suggestion or invention results in:

(a) eliminating or reducing an agency's expenditures; or

(b) improving services to the public by permitting more work to be accomplished without increasing the cost of governmental operations.

(2) (a) An employee may not be eligible for an incentive award if his suggestion or invention directly relates to his assigned duties and responsibilities unless the proposal is so superior or meritorious as to warrant special recognition as determined by the governing body.

(b) Suggestions or inventions relating to the following matters may not be considered for awards:

(i) personnel grievances;

(ii) classification and pay of positions;

(iii) matters recommended for study or review; and

(iv) proposals resulting from assigned or contracted audits, studies, surveys, reviews, or research.

History: **En. Sec. 5, Ch. 87, L. 1991.**

7-4-506. Agency head to grant award. After an agency implements an employee's suggestion or invention and the amount of monetary savings to the local government is estimated, an agency head, upon written application to and approval from the governing body and the incentive awards advisory council, if there is such a council, may grant an incentive award to an employee whose proposal meets the requirements of 7-4-505.

History: **En. Sec. 6, Ch. 87, L. 1991.**

Parts 6 through 20 reserved

Part 21

County Commissioners

Part Cross-References

State assumption of county public assistance programs, Title 53, ch. 2, part 8.

7-4-2101. Composition of board of county commissioners. Each county may have a board of county commissioners consisting of three members.

History: **En. Sec. 4210, Pol. C. 1895; re-en. Sec. 2881, Rev. C. 1907; re-en. Sec. 4452, R.C.M. 1921; Cal. Pol. C. Sec. 4022; amd. Sec. 1, Ch. 118, L. 1933; re-en. Sec. 4452, R.C.M. 1935; amd. Sec. 1, Ch. 123, L. 1973; R.C.M. 1947, 16-901(part).**

7-4-2102. Division of county into commissioner districts. (1) In every county of the state, following each federal decennial census, the board of county commissioners shall divide their respective counties into three commissioner districts, as compact and equal in population and area as possible. Such apportionment may take place at any time for the purpose of equalizing in population and area such commissioner districts. However, no commissioner district shall at any time be changed to affect the term of office of any county commissioner who has been elected. No change in the boundaries of any commissioner district shall be made within 6 months next preceding a primary election.

(2) The district judge or judges of the county shall review the action of the commissioners to determine whether or not such action meets the requirements of this section.

(3) Sections 7-4-2102 through 7-4-2104 shall not apply to counties adopting an optional or alternative form of government authorized by law.

History: **(1), (2)En. 16-902.1 by Sec. 1, Ch. 298, L. 1974; Sec. 16-902.1, R.C.M. 1947; (3)En. 16-902.5 by Sec. 5, Ch. 298, L. 1974; Sec. 16-902.5, R.C.M. 1947; R.C.M. 1947, 16-902.1, 16-902.5; amd. Sec. 1, Ch. 182, L. 1983.**

7-4-2103. Filing of certificate designating districts. When such division of commissioner districts has been made, there shall be filed in the office of the county clerk and recorder of such county a certificate designating the metes and bounds of the boundary lines and limits of each commissioner district. The certificate shall be dated and signed by the district court judge or judges of the county.

History: **En. 16-902.2 by Sec. 2, Ch. 298, L. 1974; R.C.M. 1947, 16-902.2.**

7-4-2104. Commissioners to be elected by district. (1) At each general election, the member or members of the board of county commissioners to be elected shall be selected from the residents and electors of the district or districts in which the vacancy occurs, but the election of such member or members of the board shall be submitted to the entire electorate of the county.

(2) No one shall be elected as a member of said board who has not resided in the county for at least 2 years next preceding the time when he shall become a candidate for said office and was not a resident of the district at the time of filing for the primary election.

History: En. 16-902.3 by Sec. 3, Ch. 298, L. 1974; R.C.M. 1947, 16-902.3; amd. Sec. 1, Ch. 224, L. 1987.

7-4-2105. Term of office. The term of office of county commissioners is 6 years. A county commissioner takes office on the first Monday of January succeeding the date of the election at which the county commissioner was elected.

History: En. Sec. 4210, Pol. C. 1895; re-en. Sec. 2881, Rev. C. 1907; re-en. Sec. 4452, R.C.M. 1921; Cal. Pol. C. Sec. 4022; amd. Sec. 1, Ch. 118, L. 1933; re-en. Sec. 4452, R.C.M. 1935; amd. Sec. 1, Ch. 123, L. 1973; R.C.M. 1947, 16-901(part); amd. Sec. 4, Ch. 220, L. 1985.

7-4-2106. Vacancy on board of county commissioners. (1) For the purposes of this part, "vacancy" has the same meaning as prescribed in 2-16-501.

(2) Whenever a vacancy occurs in the board of county commissioners from a failure to elect or otherwise, the remaining county commissioners must fill the vacancy, and such appointee shall hold office until the next general election unless otherwise provided in subsection (3) or (4). The procedure to be used to fill the vacancy is as follows:

(a) If the former incumbent represented a party eligible for a primary election under 13-10-601, the county central committee of that party shall submit to the remaining commissioners three names of people who have lived in the unrepresented district for at least 2 years preceding the day the vacancy occurs, and the remaining commissioners shall appoint one of these three to fill the vacancy. Whenever the remaining commissioners are unable to elect an appointee from the submitted list, they shall request a second list of three names from the county central committee. The second list may not contain any of the names submitted on the first list. The remaining commissioners shall then select an appointee from the individuals named on both lists.

(b) If the former incumbent was independent or was originally nominated by a party that does not meet the requirements of 13-10-601 or if the vacancy occurs from a failure to elect, the remaining commissioners shall invite applications for the vacancy in a notice published as provided in 13-1-108 and shall accept an application from any person who has lived in the unrepresented district for at least 2 years preceding the day the vacancy occurs. The remaining commissioners shall appoint one of these applicants to fill the vacancy.

(3) Whenever a vacancy occurs 75 days or more before the general election held during the second or fourth year of the term, an individual shall be elected to complete the term at that general election. The election procedure to be used to elect the successor is as follows:

(a) Whenever the vacancy occurs 75 days or more before the primary election during the second or fourth year of the term, the same procedure shall be utilized as is used to elect county commissioners to full 6-year terms.

(b) Whenever the vacancy occurs after the 75th day preceding the primary election, any political party desiring to enter a candidate in the general election shall select a candidate as provided in 13-38-204. A political party shall notify the clerk and recorder of the party nominee. A person desiring to be a candidate as an independent shall follow the procedures provided in 13-10-501 and 13-10-502. The petition for an independent candidate shall be filed with the clerk and recorder on or before the 75th day prior to the general election. A candidate for a nonpartisan office shall file as provided in Title 13, chapter 14.

(4) Whenever a vacancy occurs after the 75th day preceding the general election held during the fourth year of the term, the person appointed by the remaining county commissioners under 7-4-2106(2) shall serve until the end of the term.

History: En. Sec. 4212, Pol. C. 1895; re-en. Sec. 2883, Rev. C. 1907; amd. Sec. 1, Ch. 5, L. 1913; amd. Sec. 1, Ch. 28, L. 1921; re-en. Sec. 4454, R.C.M. 1921; Cal. Pol. C. Sec. 4026; re-en. Sec. 4454, R.C.M. 1935; R.C.M. 1947, 16-903; amd. Sec. 2, Ch. 526, L. 1979; amd. Sec. 14, Ch. 250, L. 1985; amd. Sec. 1, Ch. 551, L. 1985.

Cross-References

Date of general elections, 13-1-104.

7-4-2107. Compensation of county commissioners. (1) Except as provided in subsection (3), each member of the board of county commissioners in counties of the first, second, third, and fourth class shall receive an annual salary equal to the annual salary established in 7-4-2503 for the clerk and recorder plus $2,000. However, the county commissioners may, for all or the remainder of each fiscal year, in conjunction with setting salaries for other officers as provided in 7-4-2504(1), set their salaries at the prior fiscal year level if that level is lower than the level required by this subsection.

(2) Each member of the board in all other counties may receive an annual salary equal to the annual salary established in 7-4-2503(1)(a)(ii) for the clerk and recorder or a salary at a per-day rate determined by using the salary established in 7-4-2503(1)(a)(ii) for the clerk and recorder. However, the county commissioners may, for all or the remainder of each fiscal year, in conjunction with setting salaries for other officers as provided in 7-4-2504(1), set their salaries at the prior fiscal year level if that level is lower than the level required by this subsection. The salary determined by the board must apply uniformly to all board members.

(3) Each member of the board of fourth-class counties may receive a salary at a daily rate determined by using the salary established in subsection (1). If a daily rate is used, then all board members must be paid on that basis.

(4) This section does not apply to counties that have adopted a charter form of government.

History: En. Sec. 347, 5th Div. Rev. Stat. 1879; amd. Sec. 755, 5th Div. Comp. Stat. 1887; amd. Sec. 4222, Pol. C. 1895; re-en. Sec. 2893, Rev. C. 1907; re-en. Sec. 4464, R.C.M. 1921; re-en. Sec. 4464, R.C.M. 1935; amd. Sec. 1, Ch. 176, L. 1939; amd. Sec. 1, Ch. 4, L. 1949; amd. Sec. 1, Ch. 100, L. 1951; amd. Sec. 1, Ch. 82, L. 1955; amd. Sec. 1, Ch. 238, L. 1957; amd. Sec. 1, Ch. 113, L. 1963; amd. Sec. 1, Ch. 260, L. 1965; amd. Sec. 1, Ch. 56, L. 1967; amd. Sec. 1, Ch. 223, L. 1967; amd. Sec. 1, Ch. 177, L. 1969; amd. Sec. 1, Ch. 415, L. 1973; amd. Sec. 6, Ch. 439, L. 1975; amd. Sec. 3, Ch. 493, L. 1977; R.C.M. 1947, 16-912(part); amd. Sec. 2, Ch. 518, L. 1981; amd. Sec. 1, Ch. 264, L. 1985; amd. Sec. 2, Ch. 12, Sp. L. June 1986; amd. Sec. 1, Ch. 527, L. 1991; amd. Sec. 1, Ch. 28, L. 1993.

Cross-References

Classification of counties, 7-1-2111.

7-4-2108. Mileage allowance for county commissioners — expenses. (1) In addition to the salary provided by 7-4-2107(1), each member of the board of county commissioners in counties of the first, second, third, and fourth class shall receive a mileage allowance as provided in 2-18-503 for the distance necessarily traveled in going to and returning from the county seat and his place of residence, each day that such trip is actually made and while engaged in the performance of his official duties.

(2) Each member of the board in all other counties is entitled to a mileage allowance as provided in 2-18-503 for the distance necessarily traveled in going to and returning from the county seat and his place of residence each day that such trip is actually made to perform official duties. Any county commissioner whose place of residence is 50 miles or more from the county seat, as measured by the usual route of travel, and who elects to remain more than one day in the county seat to attend sessions of the board or perform his official duties is entitled to receive, in addition to mileage for one round trip between his place of residence and the county seat, $18 per day as expenses for each day's attendance on sessions of the board while engaged in the performance of his official duties.

(3) All claims for lodging expense reimbursement allowed under this section must be documented by an appropriate receipt.

(4) When other than commercial, nonreceiptable lodging facilities are utilized by a county commissioner, the amount of $7 will be authorized for lodging expenses for each day in which travel involves an overnight stay in lieu of the amount authorized in this section. However, when overnight accommodations are provided at the expense of any government entity, no reimbursement may be claimed for lodging.

(5) This section does not apply to counties that have adopted charter form of government.

History: En. Sec. 347, 5th Div. Rev. Stat. 1879; amd. Sec. 755, 5th Div. Comp. Stat. 1887; amd. Sec. 4222, Pol. C. 1895; re-en. Sec. 2893, Rev. C. 1907; re-en. Sec. 4464, R.C.M. 1921; re-en. Sec. 4464, R.C.M. 1935; amd. Sec. 1, Ch. 176, L. 1939; amd. Sec. 1, Ch. 4, L. 1949; amd. Sec. 1, Ch. 100, L. 1951; amd. Sec. 1, Ch. 82, L. 1955; amd. Sec. 1, Ch. 238, L. 1957; amd. Sec. 1, Ch. 113, L. 1963; amd. Sec. 1, Ch. 260, L. 1965; amd. Sec. 1, Ch. 56, L. 1967; amd. Sec. 1, Ch. 223, L. 1967; amd. Sec. 1, Ch. 177, L. 1969; amd. Sec. 1, Ch. 415, L. 1973; amd. Sec. 6, Ch. 439, L. 1975; amd. Sec. 3, Ch. 493, L. 1977; R.C.M. 1947, 16-912(part); amd. Sec. 1, Ch. 370, L. 1979.

Cross-References

Classification of counties, 7-1-2111.

7-4-2109. Chairman of board. The board of county commissioners must elect one of its members chairman. The chairman must preside at all meetings of the board and in case of his absence or inability to act, the members present must by an order select one of their number to act temporarily as chairman.

History: En. Sec. 4214, Pol. C. 1895; re-en. Sec. 2885, Rev. C. 1907; re-en. Sec. 4456, R.C.M. 1921; Cal. Pol. C. Sec. 4028; re-en. Sec. 4456, R.C.M. 1935; R.C.M. 1947, 16-905(part).

7-4-2110. Supervision of county and other officers. The board of county commissioners has jurisdiction and power, under such limitations and restrictions as are prescribed by law, to:

(1) supervise the official conduct of all county officers and officers of all districts and other subdivisions of the county charged with assessing, collecting, safekeeping, management, or disbursement of the public revenues;

(2) see that they faithfully perform their duties;

(3) direct prosecutions for delinquencies; and

(4) when necessary, require them to renew their official bonds, make reports, and present their books and accounts for inspection.

History: Secs. 4465-4465.29, R.C.M. 1935, en. as Sec. 4230, Pol. C. 1895; re-en. Sec. 2894, Rev. C. 1907; amd. Sec. 1, Ch. 15, L. 1919; Subd. 5 amd. Sec. 1, Ch. 84, L. 1919; amd. Sec. 1, Ch. 94, L. 1919; re-en. Sec. 4465, R.C.M. 1921; Cal. Pol. C. Sec. 4046; amd. Sec. 1, Ch. 95, L. 1923; amd. Sec. 1, Ch. 54, L. 1927; amd. Sec. 1, Ch. 38, L. 1929; Subd. 28 amd. Sec. 1, Ch. 142, L. 1929; amd. Sec. 1, Ch. 100, L. 1931; re-en. Sec. 4465, R.C.M. 1935; amd. Sec. 1, Ch. 16, L. 1965; R.C.M. 1947, 16-1001(part).

Cross-References

Inspection of official bonds, 7-4-2213.

7-4-2111. Indemnity insurance for county officers. The board of county commissioners may in its discretion pay a proper charge to any insurance company authorized to do business in this state for effecting insurance providing indemnity for or protection to any county officer against his liability for the loss, without fault, connivance, or neglect on his part, of money, securities, or other property for which he is accountable to the county.

History: Secs. 4465-4465.29, R.C.M. 1935, en. as Sec. 4230, Pol. C. 1895; re-en. Sec. 2894, Rev. C. 1907; amd. Sec. 1, Ch. 15, L. 1919; Subd. 5 amd. Sec. 1, Ch. 84, L. 1919; amd. Sec. 1, Ch. 94, L. 1919; re-en. Sec. 4465, R.C.M. 1921; Cal. Pol. C. Sec. 4046; amd. Sec. 1, Ch. 95, L. 1923; amd. Sec. 1, Ch. 54, L. 1927; amd. Sec. 1, Ch. 38, L. 1929; Subd. 28 amd. Sec. 1, Ch. 142, L. 1929; amd. Sec. 1, Ch. 100, L. 1931; re-en. Sec. 4465, R.C.M. 1935; amd. Sec. 1, Ch. 16, L. 1965; R.C.M. 1947, 16-1001(part).

Cross-References

Purchase of surety bonds by county, 2-9-703, 2-9-704.

Insurance purchase, 7-4-2111.

7-4-2112. County seal. The board of county commissioners has jurisdiction and power, under such limitations and restrictions as are prescribed by law, to adopt a seal for the board. A description and impression thereof must be filed by the clerk in the offices of the county clerk and the secretary of state.

History: En. Subd. 24, Sec. 1, Ch. 100, L. 1931; re-en. Sec. 4465.23, R.C.M. 1935; R.C.M. 1947, 16-1026.

7-4-2113. Liability on official bond of commissioner. In addition to any other penalty provided in this code, any county commissioner who neglects or refuses to perform any duty imposed on him without just cause therefor, who willfully violates any law provided for his government as such officer, who fraudulently or corruptly performs any duty imposed on him, or who willfully, fraudulently, or corruptly attempts to perform an act unauthorized by law as commissioner forfeits to the county $500 for every such act, to be recovered on his official bond, and is further liable on his official bond to any person injured thereby for all damages sustained.

History: En. Sec. 4295, Pol. C. 1895; re-en. Sec. 2954, Rev. C. 1907; re-en. Sec. 4520, R.C.M. 1921; Cal. Pol. C. Sec. 4086; re-en. Sec. 4520, R.C.M. 1935; R.C.M. 1947, 16-1161.

Cross-References

Proceedings on bonds, 2-9-501.

Official misconduct, 45-7-401.

Part 22
County Officers in General

7-4-2201. General qualifications for county office. No person is eligible to a county office who at the time of his election is not:

(1) of the age of voting as required by the Montana constitution;

(2) a citizen of the state; and

(3) an elector of the county in which the duties of the office are to be exercised or for which he is elected.

History: En. Sec. 4310, Pol. C. 1895; re-en. Sec. 2955, Rev. C. 1907; re-en. Sec. 4723, R.C.M. 1921; Cal. Pol. C. Sec. 4101; re-en. Sec. 4723, R.C.M. 1935; amd. Sec. 1, Ch. 423, L. 1971; R.C.M. 1947, 16-2401.

Cross-References

Voting age, Art. II, sec. 14, Mont. Const.

Elector, Art. IV, sec. 2, Mont. Const.

Citizen of state, 1-1-402.

7-4-2202. General qualifications for district or township offices. No person is eligible to a district or township office who is not:

(1) of the age of voting as required by the Montana constitution;

(2) a citizen of the state; and

(3) an elector of the district or township in which the duties of the office are to be exercised or for which he is elected.

History: En. Sec. 4311, Pol. C. 1895; re-en. Sec. 2956, Rev. C. 1907; re-en. Sec. 4724, R.C.M. 1921; Cal. Pol. C. Sec. 4102; re-en. Sec. 4724, R.C.M. 1935; amd. Sec. 2, Ch. 423, L. 1971; R.C.M. 1947, 16-2402.

Cross-References

Voting age, Art. II, sec. 14; Art. IV, sec. 2, Mont. Const.

Elector, Art. IV, sec. 2, Mont. Const.; 13-1-111.

Residence, 13-1-112.

7-4-2203. County officers. (1) There may be elected or appointed the following county officers, who shall possess the qualifications for suffrage prescribed by the Montana constitution and other qualifications as may be prescribed by law:

(a) one county attorney;
(b) one clerk of the district court;
(c) one county clerk;
(d) one sheriff;
(e) one treasurer;
(f) one auditor if authorized by 7-6-2401;
(g) one county superintendent of schools;
(h) one county surveyor;
(i) one assessor;
(j) one coroner;
(k) one public administrator; and
(l) at least one justice of the peace.

(2) The commissioners may appoint at their discretion constables. More than one constable may be appointed for each justice's court.

(3) All elective township officers may be elected at each general election as now provided by law.

History: En. Sec. 4315, Pol. C. 1895; re-en. Sec. 2960, Rev. C. 1907; re-en. Sec. 4728, R.C.M. 1921; Cal. Pol. C. Sec. 4109; re-en. Sec. 4728, R.C.M. 1935; amd. Sec. 1, Ch. 134,

L. 1939; amd. Sec. 16, Ch. 123, L. 1973; amd. Sec. 1, Ch. 129, L. 1973; amd. Sec. 12, Ch. 491, L. 1973; amd. Sec. 3, Ch. 253, L. 1975; R.C.M. 1947, 16-2406(part); amd. Sec. 1, Ch. 443, L. 1979; amd. Sec. 1, Ch. 228, L. 1989.

Cross-References

Constitutional listing of possible county officers, Art. XI, sec. 3(2), Mont. Const.

7-4-2204. Township officers. The officers of townships are as provided elsewhere in this code or by the board of county commissioners.

History: En. Sec. 4313, Pol. C. 1895; re-en. Sec. 2958, Rev. C. 1907; re-en. Sec. 4726, R.C.M. 1921; Cal. Pol. C. Sec. 4104; re-en. Sec. 4726, R.C.M. 1935; amd. Sec. 10, Ch. 491, L. 1973; amd. Sec. 2, Ch. 253, L. 1975; R.C.M. 1947, 16-2404.

7-4-2205. Term of office. (1) Persons elected to the different offices named in 7-4-2203 shall hold their respective offices for the term of 4 years and until their successors are elected and qualified.

(2) Persons appointed to the different offices serve at the pleasure of the commissioners.

(3) The officers mentioned in this part must take office on the first Monday of January succeeding their election.

History: En. Sec. 4315, Pol. C. 1895; re-en. Sec. 2960, Rev. C. 1907; re-en. Sec. 4728, R.C.M. 1921; Cal. Pol. C. Sec. 4109; re-en. Sec. 4728, R.C.M. 1935; amd. Sec. 1, Ch. 134, L. 1939; amd. Sec. 16, Ch. 123, L. 1973; amd. Sec. 1, Ch. 129, L. 1973; amd. Sec. 12, Ch. 491, L. 1973; amd. Sec. 3, Ch. 253, L. 1975; R.C.M. 1947, 16-2406(part); amd. Sec. 1, Ch. 71, L. 1983.

7-4-2206. Vacancies. (1) For the purposes of this part, "vacancy" has the same meaning as prescribed in 2-16-501.

(2) Vacancies in all county offices, except that of county commissioner, shall be filled by appointment by the board of county commissioners. Except for the justice of the peace, the appointee shall hold his office, if elective, until the next general election unless otherwise provided in subsections (3) or (4), and if not elective, the appointee serves at the pleasure of the commissioners.

(3) Whenever a vacancy occurs 75 days or more before the general election held during the second year of the term, an individual shall be elected to complete the term at that general election. The election procedure to be used to elect the successor is as follows:

(a) Whenever the vacancy occurs 75 days or more before the primary election during the second year of the term, the same procedure shall be utilized as is used to elect a person to that office for a full 4-year term.

(b) Whenever the vacancy occurs after the 75th day preceding the primary election, any political party desiring to enter a candidate in the general election shall select a candidate as provided in 13-38-204. A political party shall notify the clerk and recorder of the party nominee. A person desiring to be a candidate as an independent shall follow the procedures provided in 13-10-501 and 13-10-502. The petition for an independent candidate shall be filed with the clerk and recorder on or before the 75th day prior to the general election. A candidate for a nonpartisan office shall file as provided in Title 13, chapter 14.

(4) Whenever a vacancy occurs after the 75th day preceding the general election held during the second year of the term, the person appointed by the commissioners under 7-4-2206(2) shall serve until the end of the term.

(5) Vacancies occurring in the office of justice of the peace shall be filled as provided in Title 3, chapter 10, part 2.

History: En. Sec. 4315, Pol. C. 1895; re-en. Sec. 2960, Rev. C. 1907; re-en. Sec. 4728, R.C.M. 1921; Cal. Pol. C. Sec. 4109; re-en. Sec. 4728, R.C.M. 1935; amd. Sec. 1, Ch. 134, L. 1939; amd. Sec. 16, Ch. 123, L. 1973; amd. Sec. 1, Ch. 129, L. 1973; amd. Sec. 12, Ch. 491, L. 1973; amd. Sec. 3, Ch. 253, L. 1975; R.C.M. 1947, 16-2406(part); amd. Sec. 3, Ch. 526, L. 1979; amd. Sec. 15, Ch. 250, L. 1985.

Cross-References

Vacancy — County Commissioner, 7-4-2106.

General election dates, 13-1-104.

7-4-2207. Duty of officers to complete official business. It is the duty of all officers to complete the business of their respective offices to the time of the expiration of their respective terms. In case any officer, at the close of his term, leaves to his successor official labor to be performed for which he has received compensation or which it was his duty to perform, he is liable to pay to his successor the full value of such services, which may be recovered in any court of competent jurisdiction upon action brought against him on his official bond.

History: En. Sec. 4623, Pol. C. 1895; re-en. Sec. 3156, Rev. C. 1907; re-en. Sec. 4905, R.C.M. 1921; re-en. Sec. 4905, R.C.M. 1935; R.C.M. 1947, 25-221.

Cross-References

Action on official bonds, Title 2, ch. 9, part 5.

7-4-2208. Absence of county officers from state. (1) Except as provided in subsection (2), a county officer must in no case absent himself from the state for a period of more than 60 days and for no period longer than 15 days without the consent of the board of county commissioners, and if he does so absent himself, he forfeits his office.

(2) The sheriff, undersheriff, or deputy sheriffs of any county may absent themselves from the state, with the permission of the board, for a period of more than 60 days for the sole purpose of attending a recognized and accredited law enforcement training school without effecting forfeiture of their offices.

History: En. Sec. 4326, Pol. C. 1895; re-en. Sec. 2971, Rev. C. 1907; re-en. Sec. 4739, R.C.M. 1921; Cal. Pol. C. Sec. 4120; re-en. Sec. 4739, R.C.M. 1935; amd. Sec. 1, Ch. 92, L. 1947; R.C.M. 1947, 16-2417; amd. Sec. 1, Ch. 232, L. 1991.

Cross-References

Absence for military service — no vacancy in office created, 10-2-228.

7-4-2209. Authority to administer oaths. Every officer mentioned in 7-4-2203(1) may administer and certify oaths.

History: En. Sec. 4325, Pol. C. 1895; re-en. Sec. 2970, Rev. C. 1907; re-en. Sec. 4738, R.C.M. 1921; Cal. Pol. C. Sec. 4118; re-en. Sec. 4738, R.C.M. 1935; R.C.M. 1947, 16-2416; amd. Sec. 2, Ch. 443, L. 1979.

7-4-2210. Restriction on practice of law by certain officers. (1) Sheriffs, clerks, constables, and their deputies are prohibited from practicing law or acting as attorneys or counselors at law or having as a partner a lawyer or one who acts as such.

(2) No county clerk, clerk of any court, or sheriff shall act as agent or solicitor in the prosecution of any claim or application for lands, pensions, patent rights, or other proceedings before any department of the state or general government or courts of the United States during his continuance in office.

History: (1)En. Sec. 4327, Pol. C. 1895; re-en. Sec. 2972, Rev. C. 1907; re-en. Sec. 4740, R.C.M. 1921; Cal. Pol. C. Sec. 4121; re-en. Sec. 4740, R.C.M. 1935; Sec. 16-2418, R.C.M. 1947; (2)En. Secs. 454, 455, p. 134, Bannack Stat.; re-en. Secs. 611, 612, p. 159, Cod. Stat. 1871; re-en. Secs. 531, 532, p. 179, L. 1877; re-en. Secs. 531, 532, 1st Div. Rev. Stat. 1879; re-en. Secs. 548, 549, 1st Div. Comp. Stat. 1887; re-en. Sec. 181, C. Civ. Proc. 1895; re-en. Sec. 6316, Rev. C. 1907; re-en. Sec. 8869, R.C.M. 1921; Cal. C. Civ. Proc. Sec. 171; re-en. Sec. 8869, R.C.M. 1935; amd. Sec. 1, Ch. 23, L. 1963; Sec. 93-902, R.C.M. 1947; R.C.M. 1947, 16-2418, 93-902(part).

Cross-References

Practice of law, Title 37, ch. 61.

7-4-2211. County offices. (1) All county officers, except justices of the peace as set forth in 3-10-101, must keep their offices at the county seat.

(2) (a) The sheriff, the county clerk, the clerk of the district court, the treasurer, the county attorney, the county auditor in counties in which that officer is maintained, and the county assessor shall keep their offices open for the transaction of business during the office hours determined by the governing body by resolution after a public hearing and only if consented to by any affected elected county officer, every day in the year except legal holidays and Saturdays.

(b) This subsection (2) does not apply to counties operating under the county manager plan.

History: (1)En. Sec. 4322, Pol. C. 1895; re-en. Sec. 2967, Rev. C. 1907; re-en. Sec. 4735, R.C.M. 1921; Cal. Pol. C. Sec. 4116; re-en. Sec. 4735, R.C.M 1935; amd. Sec. 2, Ch. 276, L. 1974; Sec. 16-2413, R.C.M. 1947; (2)En. Sec. 4323, Pol. C. 1895; re-en. Sec. 2968, Rev. C. 1907; re-en. Sec. 4736, R.C.M. 1921; Cal. Pol. C. Sec. 4116; re-en. Sec. 4736, R.C.M. 1935; amd. Sec. 1, Ch. 108, L. 1949; amd. Sec. 1, Ch. 199, L. 1957; Sec. 16-2414, R.C.M. 1947; R.C.M. 1947, 16-2413, 16-2414(part); amd. Sec. 3, Ch. 216, L. 1995.

Compiler's Comments

1995 Amendment: Chapter 216 in (2)(a), after "business", substituted "during the office hours determined by the governing body by resolution after a public hearing and only if consented to by any affected elected county officer" for "from 8 a.m. until 5 p.m. continuously", before "holidays" inserted "legal", and at end deleted "provided, however, that the offices enumerated herein shall be kept open on Saturdays and on holidays and at other times when the business of said offices requires them to be kept open"; and made minor changes in style.

Cross-References

Office hours, 7-4-102.

7-4-2212. Official bonds of county officers. (1) The bonds of county officers are fixed by Title 2, chapter 9, part 7.

(2) Except in criminal prosecutions, whenever any special penalty, forfeiture, or liability is imposed on any officer for nonperformance or malperformance of official duty, the liability therefor attaches to the official bond of such officer and to the principal and sureties thereon.

History: (1)New section recommended by Code Commissioner, 1921; re-en. Sec. 4743, R.C.M. 1935; Sec. 16-2421, R.C.M. 1947; (2)En. Sec. 4324, Pol. C. 1895; re-en. Sec. 2969, Rev. C. 1907; re-en. Sec. 4737, R.C.M. 1921; Cal. Pol. C. Sec. 4117; re-en. Sec. 4737, R.C.M. 1935; Sec. 16-2415, R.C.M. 1947; R.C.M. 1947, 16-2415, 16-2421.

7-4-2213. Inspection of official bonds. (1) At a regular meeting of the board of county commissioners in March and September of each year, the board of county commissioners shall carefully examine all official bonds of all county and township officials then in force and effect and investigate the qualifications and financial condition and liability of all sureties thereon and their sufficiency.

(2) If it appears to the satisfaction of the board or a majority of the members thereof that any surety upon any such bond has, since the approval and acceptance of such bond, died or withdrawn therefrom; left the state;

disposed of all of his property in this state; or become mentally ill, insolvent, financially embarrassed, or not good and responsible for the amount of his liability thereon, the board shall immediately cause the clerk of the board to notify in writing the judge of the district court of that district of its action and conclusion and all facts in connection therewith and the reasons thereof.

(3) The judge shall take cognizance thereof and investigate such matter and take steps, by order to show cause or other order, citation, step, or action, as may be necessary to make such bond good and sufficient according to the requirements of law and ample security for the amount thereof.

History: **En. Sec. 1, p. 92, L. 1901; re-en. Sec. 2978, Rev. C. 1907; re-en. Sec. 4744, R.C.M. 1921; re-en. Sec. 4744, R.C.M. 1935; R.C.M. 1947, 16-2422; amd. Sec. 3, Ch. 443, L. 1979.**

Cross-References

Bonds of county officers and employees, Title 2, ch. 9, part 7.

7-4-2214 through 7-4-2220 reserved.

7-4-2221. Manner of keeping records and storing documents. Whenever any officer of any county is required or authorized by law to record, copy, file, recopy, or replace any document, plat, paper, written instrument, or book on file or of record in the officer's office, the officer may do so by photographic, micrographic, electronic, or other mechanical process that produces a clear, accurate, and permanent copy or reproduction of the original document, plat, paper, written instrument, or record in accordance with standards not less than those now approved for permanent records by national standards.

History: **(1)En. Sec. 1, Ch. 117, L. 1959; Sec. 16-2428, R.C.M. 1947; (2)En. Sec. 4411, Pol. C. 1895; re-en. Sec. 3032, Rev. C. 1907; amd. Sec. 1, Ch. 68, L. 1917; re-en. Sec. 4796, R.C.M. 1921; Cal. Pol. C. Sec. 4235; re-en. Sec. 4796, R.C.M. 1935; amd. Sec. 1, Ch. 24, L. 1945; amd. Sec. 1, Ch. 218, L. 1971; amd. Sec. 1, Ch. 199, L. 1975; amd. Sec. 19, Ch. 293, L. 1975; Sec. 16-2902, R.C.M. 1947; R.C.M. 1947, 16-2428, 16-2902(part); amd. Sec. 7, Ch. 420, L. 1993.**

7-4-2222. Substitution of reproduction for original document. (1) Any document, plat, paper, written instrument, or book reproduced as provided in 7-4-2221 can be disposed of or destroyed only upon order of the district or probate court having jurisdiction, and the reproductions may be substituted as public records.

(2) The copy of any record destroyed or disposed of as authorized in this section or a certified copy thereof is admissible as evidence in any court or proceeding and has the same force and effect as though the original record had been produced and proved.

(3) It is the duty of the custodian of the records to prepare enlarged typed or photographic copies of the records whenever their production is required by law.

History: **(1)En. Sec. 2, Ch. 117, L. 1959; Sec. 16-2429, R.C.M. 1947; (2), (3)En. Sec. 3, Ch. 117, L. 1959; Sec. 16-2430, R.C.M. 1947; R.C.M. 1947, 16-2429, 16-2430; amd. Sec. 8, Ch. 420, L. 1993.**

7-4-2223. Duplicate records — safe storage of one copy. (1) Whenever any record or document is copied or reproduced as provided in 7-4-2221, it must be made in duplicate.

(2) The custodian of the record or document shall place the master copy, the contents of the copy being first identified and indexed, in a fireproof vault or fireproof storage place. The custodian shall retain the other copy in the office with suitable equipment for reproducing the record or document for persons entitled to the record or document.

History: En. Sec. 4, Ch. 117, L. 1959; R.C.M. 1947, 16-2431; amd. Sec. 9, Ch. 420, L. 1993.

Part 23

Consolidation of County Offices

7-4-2301. Authorization to consolidate county offices. (1) Except as provided in subsection (2), the board of county commissioners of any county may in its discretion consolidate any two or more of the offices named in 7-4-2203 and combine the powers and the duties of the consolidated offices.

(2) The office of the justice of the peace may not be combined or consolidated with any other office other than another justice of the peace office.

History: En. Sec. 4315, Pol. C. 1895; re-en. Sec. 2960, Rev. C. 1907; re-en. Sec. 4728, R.C.M. 1921; Cal. Pol. C. Sec. 4109; re-en. Sec. 4728, R.C.M. 1935; amd. Sec. 1, Ch. 134, L. 1939; amd. Sec. 16, Ch. 123, L. 1973; amd. Sec. 1, Ch. 129, L. 1973; amd. Sec. 12, Ch. 491, L. 1973; amd. Sec. 3, Ch. 253, L. 1975; R.C.M. 1947, 16-2406(part); amd. Sec. 4, Ch. 443, L. 1979.

7-4-2302. Petition for consolidation of county offices. (1) At any time not later than 45 days before the date on which declarations for nomination may first be filed for any county office, a petition in writing may be filed with the board of county commissioners of a county asking for the consolidation of any two or more of said offices by the board of such county.

(2) The petition shall be signed by not less than 15% of the registered electors of such county.

History: En. Sec. 1, Ch. 125, L. 1935; re-en. Sec. 4749.1, R.C.M. 1935; amd. Sec. 7, Ch. 100, L. 1973; amd. Sec. 1, Ch. 458, L. 1973; R.C.M. 1947, 16-2501(part); amd. Sec. 1, Ch. 101, L. 1987.

Cross-References

Date of general election, 13-1-104.

7-4-2303. Petition for intercounty consolidation of offices. (1) A written petition may also be filed with the boards of county commissioners of counties asking for consolidation of any two or more offices among several counties.

(2) In the case of consolidation of offices among several counties, the petition shall be signed by not less than 15% of the registered electors in each of the counties affected.

History: En. Sec. 1, Ch. 125, L. 1935; re-en. Sec. 4749.1, R.C.M. 1935; amd. Sec. 7, Ch. 100, L. 1973; amd. Sec. 1, Ch. 458, L. 1973; R.C.M. 1947, 16-2501(part); amd. Sec. 2, Ch. 101, L. 1987.

7-4-2304. Petition details. (1) Said petition shall be addressed to the board or boards of county commissioners of the counties affected and shall set forth and state the reasons why such consolidation is believed by the petitioners to be necessary or desirable or for the best interests of the county taxpayers.

(2) Each person signing such petition shall place his printed last name, post-office address, and voting precinct after his signature.

(3) For purposes of determining the number of signatures needed on a petition to meet the percentage requirements of this part, the number of electors must be the number of individuals registered to vote at the preceding general election for the county.

History: En. Sec. 1, Ch. 125, L. 1935; re-en. Sec. 4749.1, R.C.M. 1935; amd. Sec. 7, Ch. 100, L. 1973; amd. Sec. 1, Ch. 458, L. 1973; R.C.M. 1947, 16-2501(part); amd. Sec. 3, Ch. 101, L. 1987.

7-4-2305. Initiation of consolidation by county commissioners. (1) The board or boards of county commissioners may initiate the consolidation of county offices under the procedure set forth in this part. Any board or boards desiring to consolidate any two or more offices or any two or more offices among several counties under the provisions of this part shall first pass a resolution stating the intent of the board or boards to consider consolidation.

(2) Nothing contained herein shall be deemed as limiting in any manner the discretion of the county commissioners to consolidate the several offices without the filing of the petition provided for in this part.

History: (1)En. 16-2501.1 by Sec. 2, Ch. 458, L. 1973; Sec. 16-2501.1, R.C.M. 1947; (2)En. Sec. 4, Ch. 125, L. 1935; re-en. Sec. 4749.4, R.C.M. 1935; amd. Sec. 8, Ch. 100, L. 1973; Sec. 16-2504, R.C.M. 1947; R.C.M. 1947, 16-2501.1, 16-2504.

7-4-2306. Processing of petition — resolution of intent and hearing. (1) Upon the filing of a petition for consolidation, the board or boards of county commissioners shall cause the county clerk or clerks to examine the petition and the registration records of the county or counties.

(2) If after such examination the county clerk or clerks report to the board or boards of county commissioners that the petition has been signed by not less than 15% of the registered electors of the county, the board or boards shall set a date for a hearing and pass a resolution of intent to consider the consolidation. Upon passage of the resolution of intent by the board or boards, proper notice shall be given for the hearing. The date for the hearing may not be more than 20 days after the filing of the petition or the passage of the resolution of intent.

History: En. Sec. 2, Ch. 125, L. 1935; re-en. Sec. 4749.2, R.C.M. 1935; amd. Sec. 3, Ch. 458, L. 1973; R.C.M. 1947, 16-2502(part); amd. Sec. 5, Ch. 443, L. 1979; amd. Sec. 4, Ch. 101, L. 1987.

7-4-2307. Notice of hearing. The county clerk or clerks shall cause notice of the hearing required by 7-4-2306 to be published as provided in 7-1-2121.

History: En. Sec. 2, Ch. 125, L. 1935; re-en. Sec. 4749.2, R.C.M. 1935; amd. Sec. 3, Ch. 458, L. 1973; R.C.M. 1947, 16-2502(part); amd. Sec. 5, Ch. 349, L. 1985.

7-4-2308. Joint hearings. Nothing herein shall prevent the boards of county commissioners in counties affected by intercounty consolidation from holding joint hearings, provided the proper notice is given in each of the counties affected as set forth in 7-4-2306 and 7-4-2307.

History: En. 16-2502.1 by Sec. 4, Ch. 458, L. 1973; R.C.M. 1947, 16-2502.1.

7-4-2309. Conduct of hearing — decision. (1) At the time designated in said notice, the county commissioners shall proceed to hear said petition and the evidence for or against the same. Any registered elector of the county affected shall have the right to appear and be heard upon said petition, subject, however, to the right of the county commissioners to limit cumulative testimony and to prevent the undue prolonging of said hearing.

(2) Within 5 days after the date set for said hearing, the board or boards of county commissioners shall make such order in relation to the consolidation of said offices as they shall deem proper. Such order must be made at least 7 days before the date on which declarations for nomination may first be filed for any county office.

History: **En. Sec. 3, Ch. 125, L. 1935; re-en. Sec. 4749.3, R.C.M. 1935; amd. Sec. 5, Ch. 458, L. 1973; R.C.M. 1947, 16-2503; amd. Sec. 5, Ch. 101, L. 1987.**

7-4-2310. Order for consolidation of offices. (1) In consolidating county offices, the board of county commissioners shall, not less than 7 days before the date on which declarations for nomination may first be filed for any office to be consolidated or not less than 6 months prior to the appointment to the offices to be consolidated, make and enter an order combining any two or more of the within-named offices.

(2) Whenever an order consolidating two or more offices is made, the order shall be entered in full on the board's minutes of proceedings.

(3) The order shall be published in a newspaper of general circulation, printed and published in the county or counties affected, for a period of 2 successive weeks following the date of the making and entering of the order.

History: **Ap. p. Sec. 4315, Pol. C. 1895; re-en. Sec. 2960, Rev. C. 1907; re-en. Sec. 4728, R.C.M. 1921; Cal. Pol. C. Sec. 4109; re-en. Sec. 4728, R.C.M. 1935; amd. Sec. 1, Ch. 134, L. 1939; amd. Sec. 16, Ch. 123, L. 1973; amd. Sec. 1, Ch. 129, L. 1973; amd. Sec. 12, Ch. 491, L. 1973; amd. Sec. 3, Ch. 253, L. 1975; Sec. 16-2406, R.C.M. 1947; Ap. p. Sec. 5, Ch. 125, L. 1935; re-en. Sec. 4749.5, R.C.M. 1935; amd. Sec. 9, Ch. 100, L. 1973; amd. Sec. 6, Ch. 458, L. 1973; Sec. 16-2505, R.C.M. 1947; R.C.M. 1947, 16-2406(part), 16-2505; amd. Sec. 6, Ch. 443, L. 1979; amd. Sec. 6, Ch. 101, L. 1987.**

7-4-2311. Implementation of consolidation order. (1) Whenever any such order is made consolidating two or more of such offices, it shall be the duty of the officers holding and occupying such offices, at the end of their terms of office, to deliver and transfer to their successor or successors all of the books, files, papers, documents, maps, plats, and records of such offices.

(2) The officer or officers receiving the same shall make and deliver proper receipts therefor and shall thereafter:

(a) be the custodian or custodians of such books, files, papers, documents, maps, plats, and records;

(b) perform all of the duties and acts imposed on such consolidated offices as required of them by law; and

(c) make and execute, with full legal force and effect, all certificates, official statements, official reports, affidavits, and other instruments required to be made by the laws of this state by either or any of the officers whose offices have been so consolidated.

(3) If the laws of this state or the rules, regulations, orders, or directions of any officer or department of the state shall require each of two offices which are consolidated to keep duplicate or similar records, books, or accounts, after such consolidation, such consolidated office shall keep but one set of such records, books, or accounts.

History: **En. Sec. 6, Ch. 125, L. 1935; re-en. Sec. 4749.6, R.C.M. 1935; R.C.M. 1947, 16-2506.**

7-4-2312. Salary and bond of officer following consolidation. (1) (a) When two or more offices are consolidated under a single officer, such officer shall receive as salary an amount to be determined by the board or boards of county commissioners, but which amount must not be more than 20% higher than the highest salary provided by law to be paid to any officer whose duties he is required to perform by reason of such consolidations.

(b) The board or boards shall, in June of each fourth year, adopt a resolution fixing the salary of such officer for the term beginning with the first Monday in January immediately following the adoption of such resolution.

(2) Such officer shall give a bond in an amount equal to the highest bond required by law of any officer whose duties he is required to perform by reason of such consolidation.

History: **En. Sec. 7, Ch. 125, L. 1935; re-en. Sec. 4749.7, R.C.M. 1935; amd. Sec. 1, Ch. 107, L. 1937; amd. Sec. 1, Ch. 104, L. 1941; amd. Sec. 7, Ch. 458, L. 1973; R.C.M. 1947, 16-2507(part).**

Cross-References

Bonds of county officers and employees, Title 2, ch. 9, part 7.

Compensation of county officers, 7-4-2501.

7-4-2313. Deputies and personnel for consolidated offices. (1) Whenever county offices are consolidated, the officer of the consolidated office may appoint as many deputies as are approved by the board or boards of county commissioners.

(2) The board or boards shall determine the number of deputies, stenographers, and clerks the officers may appoint.

History: **En. Sec. 7, Ch. 125, L. 1935; re-en. Sec. 4749.7, R.C.M. 1935; amd. Sec. 1, Ch. 107, L. 1937; amd. Sec. 1, Ch. 104, L. 1941; amd. Sec. 7, Ch. 458, L. 1973; R.C.M. 1947, 16-2507(part); amd. Sec. 7, Ch. 443, L. 1979.**

Part 24

Deputy Officers in General

Part Cross-References

Veterans' public employment preference, Title 39, ch. 29.

Handicapped persons' public employment preference, Title 39, ch. 30.

7-4-2401. Deputy officers. (1) Each county and township officer, except a justice of the peace and the county assessor, may appoint as many deputies or assistants as may be necessary for the faithful and prompt discharge of the duties of the office. All compensation or salary of any deputy or assistant must be as provided in this code.

(2) The appointment of deputies, clerks, and subordinate officers of counties, districts, and townships must be made in writing and filed in the office of the county clerk and recorder.

History: **(1)En. Sec. 4318, Pol. C. 1895; re-en. Sec. 2963, Rev. C. 1907; re-en. Sec. 4731, R.C.M. 1921; Cal. Pol. C. Sec. 4112; re-en. Sec. 4731, R.C.M. 1935; amd. Sec. 2, Ch. 309, L. 1973; Sec. 16-2409, R.C.M. 1947; (2)En. Sec. 4319, Pol. C. 1895; re-en. Sec. 2964, Rev. C. 1907; re-en. Sec. 4732, R.C.M. 1921; Cal. Pol. C. Sec. 4113; re-en. Sec. 4732, R.C.M. 1935; Sec. 16-2410, R.C.M. 1947; R.C.M. 1947, 16-2409, 16-2410; amd. Sec. 7, Ch. 27, Sp. L. November 1993.**

7-4-2402. Authorization to exceed limitation on number of deputy officers. The board of county commissioners in each county is hereby authorized to fix and determine the number of county deputy officers and to allow the several county officers to appoint a greater number of deputies than the maximum number allowed by law when, in the judgment of the board, such greater number of deputies is needed for the faithful and prompt discharge of the duties of any county office.

History: Ap. p. Sec. 1, Ch. 178, L. 1907; re-en. Sec. 3123, Rev. C. 1907; re-en. Sec. 4878, R.C.M. 1921; re-en. Sec. 4878, R.C.M. 1935; Sec. 16-3704, R.C.M. 1947; Ap. p. Sec. 2, Ch. 222, L. 1919; amd. Sec. 1, Ch. 204, L. 1921; re-en. Sec. 4874, R.C.M. 1921; amd. Sec. 1, Ch. 82, L. 1923; re-en. Sec. 4874, R.C.M. 1935; amd. Sec. 1, Ch. 87, L. 1943; amd. Sec. 1, Ch. 151, L. 1945; amd. Sec. 1, Ch. 47, L. 1947; amd. Sec. 1, Ch. 136, L. 1951; amd. Sec. 1, Ch. 365, L. 1971; Sec. 25-604, R.C.M. 1947; R.C.M. 1947, 16-3704(part), 25-604(part).

7-4-2403. Official mention of principal officer includes deputies. Whenever the official name of any principal officer is used in any law conferring power or imposing duties or liabilities, it includes his deputies.

History: En. Sec. 4320, Pol. C. 1895; re-en. Sec. 2965, Rev. C. 1907; re-en. Sec. 4733, R.C.M. 1921; Cal. Pol. C. Sec. 4114; re-en. Sec. 4733, R.C.M. 1935; R.C.M. 1947, 16-2411.

7-4-2404. Limitation on county officer acting as deputy officer. No county officer under salary must be appointed or act as deputy of another officer of the same county except in cases where the officer so appointed agrees to act and serve as such deputy without additional compensation.

History: En. Sec. 962, Pol. C. 1895; re-en. Sec. 344, Rev. C. 1907; re-en. Sec. 412, R.C.M. 1921; Cal. Pol. C. Sec. 843; amd. Sec. 1, Ch. 21, L. 1925; re-en. Sec. 412, R.C.M. 1935; R.C.M. 1947, 59-303.

7-4-2405. Appointment of deputies in certain counties of seventh class. (1) In any county of the seventh class having less than 2,000 population, there shall not be appointed any deputy county officer or deputy designated by any county officer of such county unless the appointment of such deputy, designating the term of service and compensation thereof, shall be first authorized by the board of county commissioners of such county.

(2) The board shall not approve any compensation in payment for services of any person appointed by or acting under any elected or appointed officer of said county whose appointment, as herein provided, shall not have been authorized and approved by the board of such county.

History: (1)En. Sec. 1, Ch. 168, L. 1941; Sec. 16-3707, R.C.M. 1947; (2)En. Sec. 2, Ch. 168, L. 1941; Sec. 16-3708, R.C.M. 1947; R.C.M. 1947, 16-3707, 16-3708.

Part 25
Compensation and Official Fees

7-4-2501. Compensation of county officers. (1) The county surveyor (if not receiving a salary under 7-4-2812) and the public administrator may collect and receive for their own use, respectively, for official services, the fees and emoluments prescribed by law.

(2) All other county officers receive salaries.

History: En. Sec. 4592, Pol. C. 1895; re-en. Sec. 3113, Rev. C. 1907; re-en. Sec. 4865, R.C.M. 1921; re-en. Sec. 4865, R.C.M. 1935; R.C.M. 1947, 25-202; amd. Sec. 2, Ch. 371, L. 1979; amd. Sec. 8, Ch. 443, L. 1979; amd. Sec. 4, Ch. 518, L. 1981; amd. Sec. 24, Ch. 575, L. 1981.

7-4-2502. Payment of salaries of county officials and assistants. (1) Except as provided in subsection (2), the salaries of the county officers and their assistants may be paid monthly, twice monthly, or every 2 weeks out of the general fund of the county and upon the order of the board of county commissioners.

(2) (a) The salaries of the county attorney and deputy county attorneys authorized by 7-4-2703 are payable monthly, with the salary of the county attorney payable one-half from the general fund of the county and, if the county has supplied the information to the department of justice for inclusion in its budget, the other one-half from the state treasury upon the warrant of the state treasurer. If the county has not supplied information concerning any scheduled or proposed increase in salary for the county attorney to the department of justice for inclusion in material submitted to the budget director under Title 17, chapter 7, part 1, the county is responsible for any increased salary.

(b) The county commissioners of each county shall, within 30 days after the election or appointment to fill a vacancy for any cause in the office of county attorney, certify the election or appointment to the department of justice. The department shall notify the state treasurer of the salary of the county attorney. The state treasurer shall draw warrants for the county attorney salaries in the same manner as for state officers. In case of a vacancy, the county commissioners shall immediately notify the department of justice, and the department shall compute the salary due on the basis of the notification.

(3) The board has jurisdiction and power, under limitations and restrictions prescribed by law, to fix the compensation of all county officers not otherwise fixed by law and to provide for the payment of the compensation and may, for all or the remainder of each fiscal year, in conjunction with setting salaries for other officers as provided in 7-4-2504(1), set their salaries at the prior fiscal year level.

History: (1)(a), (2)En. Sec. 4595, Pol. C. 1895; re-en. Sec. 3117, Rev. C. 1907; re-en. Sec. 4868, R.C.M. 1921; amd. Sec. 4, Ch. 141, L. 1925; re-en. Sec. 4868, R.C.M. 1935; amd. Sec. 1, Ch. 7, L. 1945; Sec. 25-601, R.C.M. 1947; (1)(b)En. Sec. 4603, Pol. C. 1895; re-en. Sec. 3136, Rev. C. 1907; re-en. Sec. 4872, R.C.M. 1921; re-en. Sec. 4872, R.C.M. 1935; Sec. 25-602, R.C.M. 1947; (3)En. Subd. 18, Sec. 1, Ch. 100, L. 1931; re-en. Sec. 4465.17, R.C.M. 1935; Sec. 16-1020, R.C.M. 1947; R.C.M. 1947, 16-1020, 25-601, 25-602(part); amd. Sec. 1, Ch. 109, L. 1979; amd. Sec. 9, Ch. 443, L. 1979; amd. Sec. 2, Ch. 719, L. 1985; amd. Sec. 3, Ch. 12, Sp. L. June 1986; amd. Sec. 1, Ch. 17, Sp. L. June 1986; amd. Sec. 1, Ch. 667, L. 1991; amd. Sec. 1, Ch. 332, L. 1993; amd. Sec. 5, Ch. 325, L. 1995.

Compiler's Comments

1995 Amendment: Chapter 325 in (2)(a), at end of first sentence, and (2)(b), in second and third sentences, substituted "state treasurer" for "auditor"; and made minor changes in style. Amendment effective July 1, 1995.

Cross-References

Affidavit for deputy to receive salary, 7-4-2506.

Fees affidavit required of county officers, 7-4-2514.

Imposition of charge upon conviction or forfeiture — use for prosecutorial salaries, 46-18-236.

7-4-2503. Salary schedule for certain county officers. (1) (a) The salary paid to the county treasurer, county clerk and recorder, clerk of the district court, county assessor, county superintendent of schools, county sheriff, county surveyor in counties where county surveyors receive salaries as provided in 7-4-2812, and county auditor in all counties where the office is authorized must be established by the county governing body at no less than 80% of the annual base salary of:

(i) $25,000 for counties of the first through fifth class added to the population increment of $10 for each 100 persons or major fraction of 100 persons included in the county's population as determined by the 1990 federal decennial census; or

(ii) $18,000 for counties of the sixth and seventh class added to the population increment of $10 per 100 persons or major fraction of 100 persons in the county's population as determined by the 1990 federal decennial census.

(b) The annual base established by the county governing body in subsection (1) must be uniform for all county officers referred to in subsection (1).

(2) (a) An elected county superintendent of schools must receive, in addition to the salary based upon subsection (1), the sum of $400 per year, except that an elected county superintendent of schools who holds a master of arts degree or a master's degree in education, with an endorsement in school administration, from a unit of the Montana university system or an equivalent institution may, at the discretion of the county commissioners, receive, in addition to the salary based upon subsection (1), up to $2,000 per year.

(b) The county sheriff must receive, in addition to the salary based upon subsection (1), the sum of $2,000 per year.

(c) The county sheriff must receive a longevity payment amounting to 1% of the base salary set forth in subsection (1) for each year of service with the sheriff's department, but years of service during any year in which the salary was set at the level of the salary of the prior fiscal year may not be included in any calculation of longevity increases. The additional salary amount provided for in this subsection may not be included in the base salary for purposes of computing the compensation for undersheriffs and deputy sheriffs as provided in 7-4-2508.

(3) (a) In each county with a population in excess of 30,000, the county attorney must be a full-time official under 7-4-2704, and the salary is $50,000 per year. In counties with a population less than 30,000, the county attorney who is a part-time official for a county of the first, second, or third class is entitled to receive an annual salary equal to 60% of the annual salary of a full-time county attorney. A county attorney who is a part-time official for a county of the fourth, fifth, sixth, or seventh class is entitled to receive an annual salary equal to 50% of the annual salary of a full-time county attorney.

(b) In those counties where the office of the county attorney has been established as a full-time position pursuant to 7-4-2706, the salary of the county attorney is the same as that established for full-time county attorneys in subsection (3)(a).

(c) On August 1 of each year, each county attorney is entitled to an increase in salary calculated by adding to the annual salary a percentage of up to 100% of the previous calendar year's consumer price index for all urban consumers, U.S. department of labor, bureau of labor statistics, or other index that the bureau of business and economic research of the university of Montana may in the future recognize as the successor to that index. However, the county commissioners may, for all or the remainder of each fiscal year, in conjunction with setting salaries for other officers as provided in 7-4-2504(1), set the salary at the prior fiscal year level if that level is lower than the level required by this subsection (3)(c). The cost-of-living increment for each fiscal year must be added to all cost-of-living increments granted for previous years unless salaries were set for the fiscal year at the level of salaries received in the prior fiscal year. Unless restored pursuant to 7-4-2504(2), a cost-of-living increment that would have been received for the fiscal year, computed on the prior fiscal year, may not be added to previous increments.

(d) (i) After completing 4 years of service as deputy county attorney, each deputy county attorney is entitled to an increase in salary of $1,000 on the anniversary date of employment as deputy county attorney. After completing 5 years of service as deputy county attorney, each deputy county attorney is entitled to an additional increase in salary of $1,500 on the anniversary date of employment. After completing 6 years of service as deputy county attorney and for each year of service thereafter up to completion of the 11th year of service, each deputy county attorney is entitled to an additional annual increase in salary of $500.

(ii) The years of service as a deputy county attorney accumulated prior to July 1, 1985, must be included in the calculation of the longevity increase, but, unless longevity increases are restored pursuant to 7-4-2504(2), the years of service during a year in which the salary was set at the level of the salary of the prior fiscal year may not be included in a calculation of longevity increases.

(4) The latest federal decennial census statistics are the basis for computation of population increments under this section. During the intervening 9 years, the computation of population increments applicable on July 1 of each year is based on the most current calendar year's estimates of counties' populations compiled by the federal-state cooperative program for estimates of the university of Montana bureau of business and economic research and the U.S. bureau of the census or other estimate that the bureau of business and economic research may certify.

History: Ap. p. Sec. 1, Ch. 150, L. 1945; amd. Sec. 1, Ch. 177, L. 1949; amd. Sec. 1, Ch. 118, L. 1951; amd. Sec. 1, Ch. 222, L. 1953; amd. Sec. 1, Ch. 22, L. 1957; amd. Sec. 1, Ch. 66, L. 1959; amd. Sec. 1, Ch. 195, L. 1961; amd. Sec. 1, Ch. 216, L. 1965; amd. Sec. 1, Ch. 231, L. 1967; amd. Sec. 1, Ch. 284, L. 1969; amd. Sec. 1, Ch. 265, L. 1971; amd. Sec. 10, Ch. 391, L. 1973; amd. Sec. 1, Ch. 474, L. 1973; amd. Sec. 1, Ch. 331, L. 1974; amd. Sec. 3, Ch. 102, L. 1975; amd. Sec. 1, Ch. 195, L. 1975; amd. Sec. 1, Ch. 493, L. 1977; Sec. 25-605, R.C.M. 1947; Ap. p. Sec. 4, Ch. 150, L. 1945; amd. Sec. 1, Ch. 91, L. 1947; amd. Sec. 1, Ch. 177, L. 1949; Sec. 25-608, R.C.M. 1947; R.C.M. 1947, 25-605, 25-608; amd. Sec. 1, Ch. 459, L. 1979; amd. Sec. 4, Ch. 669, L. 1979; amd. Sec. 1, Ch. 518, L. 1981; amd. Sec. 1, Ch. 562, L. 1985; amd. Sec. 3, Ch. 719, L. 1985; amd. Sec. 4, Ch. 12, Sp. L. June 1986; amd. Sec. 1, Ch. 257, L. 1989; amd. Sec. 1, Ch. 505, L. 1989; amd. Sec. 2, Ch. 527, L. 1991; amd. Sec. 2, Ch. 667, L. 1991; amd. Sec. 10, Ch. 10, L. 1993; amd. Sec. 1, Ch. 230, L. 1995; amd. Sec. 1, Ch. 233, L. 1995.

Compiler's Comments

1995 Amendments: Chapter 230 near end of (1)(a), after "authorized", deleted "for the fiscal year beginning July 1, 1991, and each year thereafter"; at beginning of (3)(c) substituted "On August 1 of each year" for "Beginning July 1, 1991, and on July 1 of each succeeding year"; and made minor changes in style. Amendment effective March 24, 1995.

Chapter 233 in (1)(a), (3)(a), (3)(b), and in two places in (3)(c) deleted provision applying law beginning July 1, 1991; in first sentence of (3)(c) substituted "a percentage of up to 100% of" for "the percentage change in" and in third sentence deleted provision applying law beginning July 1, 1983; at beginning of (4) deleted "For each 10th year after the fiscal year beginning July 1, 1981"; and made minor changes in style. Amendment effective July 1, 1995.

Cross-References

Classification of counties, 7-1-2111.

Compensation for officer of consolidated county office, 7-4-2312.

Authorization of County Auditor, 7-6-2401.

Montana University System, Title 20, ch. 25.

Imposition of charge upon conviction or forfeiture — use for prosecutorial salaries, 46-18-236.

7-4-2504. Salaries to be fixed by resolution — cost-of-living increments. (1) The county governing body shall by resolution on or before August 1 of each year adjust and uniformly fix the salaries of the county treasurer, county clerk, county assessor, county school superintendent, county sheriff, clerk of district court, county auditor (if there is one), and county surveyor (if the surveyor receives a salary). The salaries fixed may be no less than 80% of the annual base salary provided for in 7-4-2503(1) plus a cost-of-living increment based on a percentage of up to 100% of the previous calendar year's consumer price index for all urban consumers, U.S. department of labor, bureau of labor statistics, or other index that the bureau of business and economic research of the university of Montana may in the future recognize as the successor to that index. The county governing body may, however, for all or the remainder of each fiscal year, in conjunction with setting salaries for the same action on the salaries of justices of the peace (if applicable), the county governing body, the county attorney, and the coroner, set the salary at the prior fiscal year level if that level is lower than the level required by this subsection. The cost-of-living increment for each fiscal year must be added to all cost-of-living increments granted for previous years unless salaries were set for the fiscal year at the level of salaries received in the prior fiscal year. In such a case, the cost-of-living increment that would have been received for the fiscal year, computed on the prior fiscal year, may not be added to previous increments.

(2) The county governing body may, in any subsequent fiscal year, restore for 1 or more years the annual cost-of-living increments withheld pursuant to subsection (1). If cost-of-living increments are restored, the longevity increases provided for sheriffs in 7-4-2503, for deputy county attorneys in 7-4-2503(3)(d)(i), and for undersheriffs and deputy sheriffs in 7-4-2510 must also be restored for the years for which the cost-of-living increment was restored.

(3) The county governing body shall by resolution, prior to August 1 of each year, establish the salary of the coroner and may, for all or the remainder of each fiscal year, in conjunction with setting salaries for other officers as provided in subsection (1), set the salary at the prior fiscal year level. The salary must be in effect on the first day of each ensuing fiscal year.

History: En. Sec. 1, Ch. 306, L. 1973; R.C.M. 1947, 25-609.1; amd. Sec. 10, Ch. 443, L. 1979; amd. Sec. 2, Ch. 459, L. 1979; amd. Sec. 3, Ch. 518, L. 1981; amd. Sec. 25, Ch. 575, L. 1981; amd. Sec. 5, Ch. 12, Sp. L. June 1986; amd. Sec. 2, Ch. 257, L. 1989; amd. Sec. 2, Ch. 505, L. 1989; amd. Sec. 3, Ch. 527, L. 1991; amd. Sec. 11, Ch. 10, L. 1993; amd. Sec. 2, Ch. 230, L. 1995; amd. Sec. 2, Ch. 233, L. 1995.

Compiler's Comments

1995 Amendments: Chapter 230 in (1), in first sentence after "before", substituted "August 1 of each year" for "July 1, 1992, and on or before July 1 of each year thereafter" and in fourth sentence, after "increment for", deleted "the fiscal year beginning July 1, 1992"; deleted former (3) that read: "(3) If the application of 7-4-2503 does not qualify a county official for a salary increase, the salary base for the fiscal year beginning July 1, 1991, must be the fiscal year 1990-91 salary plus 100% of the last previous calendar year's consumer price index for all urban consumers, as set forth in subsection (1)"; near beginning of (3) substituted "August" for "July"; and made minor changes in style. Amendment effective March 24, 1995.

Chapter 233 in two places in (1) deleted references to July 1, 1992, and subsequent years and at beginning of second sentence deleted "Except as provided in subsection (3)" and near middle inserted "a percentage of up to 100%"; deleted former (3) establishing a salary base for fiscal 1991 and subsequent years; and made minor changes in style. Amendment effective July 1, 1995.

Cross-References

Judicial salaries not to be diminished during term of office, Art. VII, sec. 7, Mont. Const.

Salaries for Justice of the Peace, 3-10-207.

7-4-2505. Amount of compensation for deputies and assistants. (1) Subject to subsection (2), the boards of county commissioners in the several counties in the state shall fix the compensation allowed any deputy or assistant of the following officers:

(a) clerk and recorder;

(b) clerk of the district court;

(c) treasurer;

(d) county attorney;

(e) auditor.

(2) (a) The salary of a deputy or an assistant listed in subsection (1), other than a deputy county attorney, may not be more than 90% of the salary of the officer under whom the deputy or assistant is serving. The salary of a deputy county attorney, including longevity payments provided in 7-4-2503(3)(d), may not exceed the salary of the county attorney under whom the deputy is serving.

(b) If a deputy or assistant is employed for a period of less than 1 year, the compensation of the deputy or assistant must be for the time employed, provided the rate of compensation may not be in excess of the rates provided by law for similar deputies and assistants.

History: Ap. p. Sec. 2, Ch. 222, L. 1919; amd. Sec. 1, Ch. 204, L. 1921; re-en. Sec. 4874, R.C.M. 1921; amd. Sec. 1, Ch. 82, L. 1923; re-en. Sec. 4874, R.C.M. 1935; amd. Sec. 1, Ch. 87, L. 1943; amd. Sec. 1, Ch. 151, L. 1945; amd. Sec. 1, Ch. 47, L. 1947; amd. Sec. 1, Ch. 136, L. 1951; amd. Sec. 1, Ch. 365, L. 1971; Sec. 25-604, R.C.M. 1947; Ap. p. Sec. 1, Ch. 61, L. 1925; re-en. Sec. 2001.1, R.C.M. 1935; amd. Sec. 1, Ch. 100, L. 1939; amd. Sec. 2, Ch. 405, L. 1973; amd. Sec. 49, Ch. 566, L. 1977; Sec. 84-402, R.C.M. 1947; R.C.M. 1947, 25-604(part), 84-402(part); amd. Sec. 1, Ch. 603, L. 1981; amd. Sec. 4, Ch. 719, L. 1985; amd. Sec. 8, Ch. 27, Sp. L. November 1993.

Cross-References

Compensation of Undersheriff and Deputy Sheriff, 7-4-2508.

Imposition of charge upon conviction or forfeiture — use for prosecutorial salaries, 46-18-236.

7-4-2506. Affidavit required for deputy to receive salary. The board must not order the payment of the compensation of any deputy until he has signed and filed with the county clerk the following affidavit:

State of Montana

County of ....

I do swear that I have rendered services as deputy .... for the month of ...., 19.., and that I am entitled to receive the full sum of my compensation for the same for my own use and benefit and that I have not paid, deposited, or assigned or contracted to pay, deposit, or assign any part of such compensation for the use of any other person or in any way, directly or indirectly, paid or given or contracted to pay or give any reward or compensation for my appointment to office or the emoluments thereof to my principal or to any other person.

....

Subscribed and sworn to before me this .... day of ...., 19...

....

History: En. Sec. 4610, Pol. C. 1895; re-en. Sec. 3143, Rev. C. 1907; re-en. Sec. 4891, R.C.M. 1921; re-en. Sec. 4891, R.C.M. 1935; R.C.M. 1947, 25-207.

7-4-2507. Deputy sheriff and undersheriff provisions — construction. If there is a conflict between 7-4-2508 through 7-4-2510 and any other law, 7-4-2508 through 7-4-2510 govern with respect to undersheriffs and deputy sheriffs.

History: **En. Sec. 7, Ch. 603, L. 1981.**

7-4-2508. Compensation of undersheriff and deputy sheriff. (1) The sheriff shall fix the compensation of the undersheriff at 95% of the salary of that sheriff.

(2) (a) The sheriff shall fix the compensation of the deputy sheriff based upon a percentage of the salary of that sheriff according to the following schedule:

In counties with population of:

Below 15,000	85% to 90%
15,000 to 29,999	76% to 90%
30,000 to 74,999	74% to 90%
75,000 and over	72% to 90%

(b) The sheriff shall adjust the compensation of the deputy sheriff within the range prescribed in subsection (a) according to a rank structure in the department.

(3) For purposes of this section, the term "compensation" means the base rate of pay and does not mean longevity payments or payments for hours worked overtime.

History: **En. Sec. 2, Ch. 603, L. 1981.**

7-4-2509. Sheriff's department — work period in lieu of workweek — overtime compensation. (1) (a) A sheriff's department may establish a work period other than the workweek provided in 39-3-405 or 7-32-2111 for determining when an employee may be paid overtime.

(b) The aggregate of all work periods in a year, when expressed in hours, may not exceed 2,080 hours.

(2) The board of county commissioners may by resolution establish that any undersheriff or deputy sheriff who works in excess of his regularly scheduled work period will be compensated for the hours worked in excess of the work period at a rate to be determined by that board of county commissioners.

History: **En. Secs. 3, 4, Ch. 603, L. 1981.**

7-4-2510. Sheriff's department — longevity payments. Beginning on the date of his first anniversary of employment with the department and adjusted annually, a deputy sheriff or undersheriff is entitled to receive a longevity payment amounting to 1% of the minimum base annual salary for each year of service with the department, but years of service during any year in which the salary was set at the same level as the salary of the prior fiscal year may not be included in any calculation of longevity increases. This payment shall be made in equal monthly installments.

History: **En. Sec. 5, Ch. 603, L. 1981; amd. Sec. 6, Ch. 12, Sp. L. June 1986.**

7-4-2511. Collection and disposal of fees. (1) Each salaried county officer must charge and collect for the use of his county and pay into the county treasury by the 10th day in each month all fees now or hereafter allowed by law, paid or chargeable in all cases, except as provided in 25-10-403. Nothing in this subsection applies to the compensation received by the sheriff as mileage while in the performance of official duties or for the board of prisoners or other persons while in his custody.

(2) No salaried county officer may receive for his own use any fees, penalties, or emoluments of any kind, except the salary as provided by law, for any official service rendered by him. Unless otherwise provided, all fees, penalties, and emoluments of every kind collected by a salaried county officer are for the sole use of the county and must be accounted for and paid to the county treasurer as provided by subsection (1) and credited to the general fund of the county.

History: (1)En. Sec. 4606, Pol. C. 1895; re-en. Sec. 3139, Rev. C. 1907; re-en. Sec. 4887, R.C.M. 1921; re-en. Sec. 4887, R.C.M. 1935; Sec. 25-203, R.C.M. 1947; (2)En. Sec. 4591, Pol. C. 1895; re-en. Sec. 3112, Rev. C. 1907; re-en. Sec. 4864, R.C.M. 1921; amd. Sec. 3, Ch. 141, L. 1925; re-en. Sec. 4864, R.C.M. 1935; Sec. 25-201, R.C.M. 1947; R.C.M. 1947, 25-201, 25-203; amd. Sec. 11, Ch. 443, L. 1979; amd. Sec. 1, Ch. 88, L. 1987.

7-4-2512. Statement and affidavit of fees collected. (1) The fees and compensation collected and chargeable for the use of the county in each month must be paid to the county treasurer by the 10th day of the following month and must be accompanied by a statement and copy of the fee book for the preceding month, duly verified by the officer making the payment.

(2) The affidavit must be in the following form:

State of Montana
County of ....

I, ..., of the county of ...., do swear that the fee book in my office contains a true statement in detail of all fees and compensations of every kind and nature for official services rendered by me, paid or chargeable, or by my deputies or assistants for the month of ...., 19.., and that this fee book shows the full amount received or chargeable in said month and since my last monthly payment; and neither myself nor, to my knowledge or belief, any of my deputies or assistants have rendered any official service, except for the county or state, which is not fully set out in this fee book; and that the foregoing statement is a full, true, and correct copy thereof.

.... (Signature)

Subscribed and sworn to before me this ..... day of ...., 19...

Seal .... (Person authorized to take oaths)
.... (Title or notarial information)

History: En. Sec. 4607, Pol. C. 1895; re-en. Sec. 3140, Rev. C. 1907; re-en. Sec. 4888, R.C.M. 1921; re-en. Sec. 4888, R.C.M. 1935; R.C.M. 1947, 25-204; amd. Sec. 12, Ch. 443, L. 1979; amd. Sec. 2, Ch. 88, L. 1987.

7-4-2513. Filing of statements and affidavits. The treasurer must file and preserve in his office said statements and affidavits and must issue to the officer one original and one duplicate receipt therefor. The officer receiving said receipts must preserve one in his office and file the duplicate with the county clerk, whereupon the clerk must charge the treasurer with the amount shown by the receipt.

History: En. Sec. 4608, Pol. C. 1895; re-en. Sec. 3141, Rev. C. 1907; re-en. Sec. 4889, R.C.M. 1921; re-en. Sec. 4889, R.C.M. 1935; R.C.M. 1947, 25-205.

7-4-2514. Filing required to receive salary. The board of county commissioners must not order the payment of the salary of any such officer until he has filed the duplicate receipt with the county clerk, properly signed by the treasurer, showing that he has made the statement and settlement for that month, required in this part, and filed the report prescribed in 7-6-2213.

History: En. Sec. 4609, Pol. C. 1895; re-en. Sec. 3142, Rev. C. 1907; re-en. Sec. 4890, R.C.M. 1921; re-en. Sec. 4890, R.C.M. 1935; R.C.M 1947, 25-206.

7-4-2515. Fees to be paid in advance. (1) The officers mentioned in this chapter must not in any case perform any official services unless the fees prescribed for such services are paid in advance. On such payment, the officers must perform the services required. For every failure or refusal to perform official duty when the fees are tendered, the officer is liable on his official bond.

(2) The county clerk is not bound to record any instrument, file any paper or notice, furnish any copies, or render any service connected with his office until the fee for the same as prescribed by law is, if demanded, paid or tendered.

(3) When any publication is required by law to be made by an officer of any suit, process, notice, order, or other paper, the costs of the same must be first tendered by the party, if demanded, for whom such order of publication was granted before the officer is compelled to make such publication.

History: (1)En. Sec. 4611, Pol. C. 1895; re-en. Sec. 3144, Rev. C. 1907; re-en. Sec. 4892, R.C.M. 1921; re-en. Sec. 4892, R.C.M. 1935; Sec. 25-208, R.C.M. 1947; (2)En. Sec. 4422, Pol. C. 1895; re-en. Sec. 3043, Rev. C. 1907; re-en. Sec. 4809, R.C.M. 1921; Cal. Pol. C. Sec. 4245; re-en. Sec. 4809, R.C.M. 1935; Sec. 16-2915, R.C.M. 1947; (3)En. Sec. 4617, Pol. C. 1895; re-en. Sec. 3150, Rev. C. 1907; re-en. Sec. 4898, R.C.M. 1921; re-en. Sec. 4898, R.C.M. 1935; Sec. 25-214, R.C.M. 1947; R.C.M. 1947, 16-2915, 25-208, 25-214.

7-4-2516. Fees not required in certain cases. No fees must be charged the state, any county, or any subdivision thereof, any public officer acting therefor, or in habeas corpus proceedings for official services rendered, and all such services must be performed without the payment of fees.

History: En. Sec. 4612, Pol. C. 1895; re-en. Sec. 3145, Rev. C. 1907; re-en. Sec. 4893, R.C.M. 1921; re-en. Sec. 4893, R.C.M. 1935; R.C.M. 1947, 25-209.

7-4-2517. Itemized receipt for fees. Every officer, upon receiving any fees for official duty or service, may be required by the person paying the same to make out in writing and deliver to such person a particular account of such fees, specifying for what they accrued, respectively, and must receipt the same. If he refuses or neglects to do so when required, he is liable to the party paying the same in treble the amount so paid.

History: En. Sec. 4614, Pol. C. 1895; re-en. Sec. 3147, Rev. C. 1907; re-en. Sec. 4895, R.C.M. 1921; re-en. Sec. 4895, R.C.M. 1935; R.C.M. 1947, 25-211.

7-4-2518. Statement of fees to be posted. (1) It is the duty of each officer entitled to collect fees to keep posted in his office a plain and legible statement of the fees allowed by law.

(2) A failure to do so subjects the officer to a fine of $100 and costs, to be recovered by the county attorney in the name of the state.

History: En. Sec. 4615, Pol. C. 1895; re-en. Sec. 3148, Rev. C. 1907; re-en. Sec. 4896, R.C.M. 1921; re-en. Sec. 4896, R.C.M. 1935; R.C.M. 1947, 25-212.

7-4-2519. Prohibition upon receiving other fees. The officers named above may receive no other fees for any services performed by them in any action or proceeding or for the performance of any service for which fees are allowed, and the party demanding or receiving any fees not herein allowed is liable to refund the same to the party aggrieved, with treble the amount as damages, in addition to the cost of suit.

History: En. Sec. 4616, Pol. C. 1895; re-en. Sec. 3149, Rev. C. 1907; re-en. Sec. 4897, R.C.M. 1921; re-en. Sec. 4897, R.C.M. 1935; R.C.M. 1947, 25-213; amd. Sec. 13, Ch. 443, L. 1979.

7-4-2520. Misconduct concerning official fees to result in vacancy of office. Upon receiving a certified copy of the record of conviction of any officer for receiving illegal fees or upon proof that the officer collected fees and failed to account for the same, the board of county commissioners must declare his office vacant and appoint his successor.

History: En. Sec. 4629, Pol. C. 1895; re-en. Sec. 3162, Rev. C. 1907; re-en. Sec. 4911, R.C.M. 1921; re-en. Sec. 4911, R.C.M. 1935; R.C.M. 1947, 25-230.

Cross-References

Official misconduct, 45-7-401.

7-4-2521. Designation of person to receive decedent's warrants or paychecks — reissuance. Any person employed by a county may file with his appointing power a designation of a person who, notwithstanding any other provision of law, is entitled, on the death of the employee, to receive all warrants or paychecks that would have been payable to the decedent had he survived. The employee may change the designation from time to time. A person so designated shall claim such warrants or paychecks from the county clerk, and on sufficient proof of identity, the county clerk shall reissue the warrant or paycheck in the name of the designated person and deliver the warrant or paycheck to the designated person.

History: En. Sec. 1, Ch. 113, L. 1983.

Cross-References

State employees designation, 2-18-412.

City employees designation, 7-4-4211.

7-4-2522 through 7-4-2524 reserved.

7-4-2525. Fees of sheriff to be fixed by resolution. (1) The county governing body may annually, by resolution, fix the fees of the sheriff for services provided in 7-32-2141.

(2) Fees set under subsection (1) must be based upon the prevailing rate charged by private process servers in the county for similar services.

(3) Fees collected under this section must be paid and credited as provided in 7-32-2141.

History: En. Sec. 1, Ch. 372, L. 1989.

Part 26

Office of County Clerk

Part Cross-References

Recordation of transfer of interest in mobile home or housetrailer, 61-3-207.

7-4-2601. Limitation on number of deputy county clerks. The whole number of deputies allowed the county clerk must not exceed:

(1) six in counties of the first and second classes;

(2) three in counties of the third class;

(3) two in counties of the fourth and fifth classes;

(4) one in counties of the sixth and seventh classes.

History: **En. Sec. 1, Ch. 75, L. 1905; re-en. Sec. 3119, Rev. C. 1907; amd. Sec. 2, Ch. 93, L. 1909; amd. Sec. 1, Ch. 119, L. 1909; re-en. Sec. 4875, R.C.M. 1921; re-en. Sec. 4875, R.C.M. 1935; amd. Sec. 1, Ch. 69, L. 1953; R.C.M. 1947, 16-3701(part).**

Cross-References

Classification of counties, 7-1-2111.

Authorization to exceed limitation on number of deputies, 7-4-2402.

Mention of officer to include deputies, 7-4-2403.

Veterans' public employment preference, Title 39, ch. 29.

Handicapped persons' public employment preference, Title 39, ch. 30.

7-4-2602. Designation of chief deputy by county clerk. The county clerk in counties of the first class may designate one of his deputy clerks as chief deputy clerk.

History: **En. Sec. 1, Ch. 53, L. 1909; re-en. Sec. 4876, R.C.M. 1921; re-en. Sec. 4876, R.C.M. 1935; R.C.M. 1947, 16-3702.**

7-4-2603 through 7-4-2610 reserved.

7-4-2611. Role and duties of county clerk and election administrator. (1) The county clerk of a county is also clerk of the county commissioners and ex officio recorder. A duty imposed by law upon the officer, whether as county clerk, clerk of the county commissioners, or recorder, must be performed by the county clerk, and any official act performed or certified by the county clerk is as valid and effectual as if performed and certified by the clerk of the county commissioners or the recorder.

(2) The county clerk shall:

(a) take charge of and safely keep or dispose of according to law all books, papers, maps, and records that may be filed or deposited in the county clerk's office;

(b) record all the proceedings of the board;

(c) make full entries of all its resolutions and decisions on all questions concerning the raising of money for and the allowance of accounts against the county;

(d) record the vote of each member on a question upon which there is a division or at the request of any member present;

(e) sign all orders made and warrants issued by order of the board for the payment of money and certify the orders and warrants to the county treasurer;

(f) record the reports of the county treasurer of the receipts and disbursements of the county;

(g) preserve and file all accounts acted upon by the board;

(h) preserve and file all petitions and applications for franchises and record the action of the board on the petitions and applications;

(i) record all orders levying taxes;

(j) designate upon each account allowed by the board the amount allowed and deliver to any person who may demand it a certified copy of any record or any account on file in the county clerk's office;

(k) when a new township is organized or the boundaries of a township are altered, immediately make out and transmit to the secretary of state a certified statement of the names and boundaries of the township organized or altered;

(l) keep other records and books and perform other duties that are prescribed by law or by rule or order of the board.

(3) An election administrator shall file, code, and cross-index all reports and statements filed as prescribed by the commissioner of political practices.

(4) An election administrator shall make statements and other information filed under the provisions of Title 13, chapters 35, 36, and 37, available for public inspection and copying during the office hours determined by the governing body by resolution after a public hearing and make copying facilities available free of charge or at a charge not to exceed actual cost.

History: **(1)En. Sec. 4671, Civ. C. 1895; re-en. Sec. 6233, Rev. C. 1907; re-en. Sec. 4813a, R.C.M. 1921; re-en. Sec. 4813.1, R.C.M. 1935; Sec. 16-2920, R.C.M. 1947; (2)Ap. p. Sec. 4424, Pol. C. 1895; re-en. Sec. 3045, Rev. C. 1907; re-en. Sec. 4811, R.C.M. 1921; Cal. Pol. C. Sec. 4204; amd. Sec. 1, Ch. 79, L. 1923; re-en. Sec. 4811, R.C.M. 1935; Sec. 16-2917, R.C.M. 1947; Ap. p. Sec. 4410, Pol. C. 1895; re-en. Sec. 3031, Rev. C. 1907; re-en. Sec. 4795, R.C.M. 1921; Cal. Pol. C. Sec. 4234; re-en. Sec. 4795, R.C.M. 1935; Sec. 16-2901, R.C.M. 1947; Ap. p. Secs. 32, 33, 35, p. 505, Bannack Stat.; re-en. Secs. 32, 33, 35, p. 439, Cod. Stat. 1871; re-en. Sec. 366, 367, 368, 5th Div. Rev. Stat. 1879; re-en. Secs. 770, 771, 773, 5th Div. Comp. Stat. 1887; amd. Sec. 4218, Pol. C. 1895; re-en. Sec. 2889, Rev. C. 1907; re-en. Sec. 4460, R.C.M. 1921; Cal. Pol. C. Sec. 4030; re-en. Sec. 4460, R.C.M. 1935; Sec. 16-908, R.C.M. 1947; Ap. p. Sec. 4426, Pol. C. 1895; re-en. Sec. 3047, Rev. C. 1907; re-en. Sec. 4813, R.C.M. 1921; Cal. Pol. C. Sec. 4205; re-en. Sec. 4813, R.C.M. 1935; Sec. 16-2919, R.C.M. 1947; (3), (4)En. 23-4790 by Sec. 15, Ch. 480, L. 1975; Sec. 23-4790, R.C.M. 1947; R.C.M. 1947, 16-908, 16-2901(part), 16-2917(1), 16-2919, 16-2920, 23-4790; amd. Sec. 303, Ch. 571, L. 1979; amd. Sec. 26, Ch. 575, L. 1981; amd. Sec. 1, Ch. 591, L. 1991; amd. Sec. 4, Ch. 216, L. 1995.**

Compiler's Comments

1995 Amendment: Chapter 216 in (4) substituted "during the office hours determined by the governing body by resolution after a public hearing" for "during regular office hours"; and made minor changes in style.

Cross-References

Restriction on practice of law, 7-4-2210.

Duties of County Clerk related to finance, 7-6-2202 through 7-6-2204.

7-4-2612. Books for recording documents. The county clerk, as ex officio recorder, shall procure books or other recording materials for records that the business of the office requires, but orders for the books or materials must first be obtained from the board of county commissioners.

History: **En. Sec. 4410, Pol. C. 1895; re-en. Sec. 3031, Rev. C. 1907; re-en. Sec. 4795, R.C.M. 1921; Cal. Pol. C. Sec. 4234; re-en. Sec. 4795, R.C.M. 1935; R.C.M. 1947, 16-2901(part); amd. Sec. 10, Ch. 420, L. 1993.**

7-4-2613. Documents subject to recording. The county clerk shall, upon the payment of the appropriate fees, record by printing, typewriting, or photographic, micrographic, or electronic process or by the use of prepared blank forms:

(1) (a) subject to subsection (1)(b), deeds, grants, transfers, certified copies of final judgments or decrees partitioning or affecting the title or possession of real property any part of which is situated in the county, contracts to sell or convey real estate and mortgages of real estate, releases of mortgages, powers of attorney to convey real estate, leases that have been acknowledged or proved, and abstracts of the instruments that have been acknowledged or proved;

(b) an instrument or deed evidencing either a division of real property or a merger of real property only if the instrument or deed is accompanied by a certification from the county treasurer that taxes and special assessments that have been assessed and levied have been paid;

(2) notices of buyer's interest in real property, notwithstanding any other requirement of law or rule relating to eligibility for recording of the deed,

contract for deed, or other document relating to the notice of buyer's interest. However, if the instrument of conveyance underlying a notice of buyer's interest would be unrecordable, the clerk and recorder shall notify the buyer by certified mail that the underlying instrument is unrecordable and may be void;

(3) except as provided in 72-16-503, a document on a form provided by the department of revenue certifying that the holder of a nonprobate interest in real property is deceased and that the deceased's interest is terminated. A nonprobate interest in real property is a joint tenancy interest, a life estate interest, or any other interest not requiring probate. The document may be on the form used by the department of revenue for responding to the application for determination of inheritance or estate tax. It must contain:

(a) a statement that the holder of the nonprobate interest has died and that the holder's interest in the property is terminated;

(b) a certification by the county treasurer that the inheritance or estate tax, if any tax was due, has been paid or that inheritance or estate tax was not due;

(c) a description of the property;

(4) certificates of births and deaths;

(5) wills devising real estate admitted to probate;

(6) official bonds;

(7) transcripts of judgments that by law are made liens upon real estate;

(8) instruments describing or relating to the individual property of married persons;

(9) all orders and decrees made by the district court in probate matters affecting real estate and that are required to be recorded;

(10) notice of preemption claims;

(11) notice and declaration of water rights;

(12) assignments for the benefit of creditors;

(13) affidavits of annual work done on mining claims;

(14) notices of mining locations and declaratory statements;

(15) estrays and lost property;

(16) a book containing appraisement of state lands; and

(17) other writings that are required or permitted by law to be recorded.

History: Ap. p. Sec. 4411, Pol. C. 1895; re-en. Sec. 3032, Rev. C. 1907; amd. Sec. 1, Ch. 68, L. 1917; re-en. Sec. 4796, R.C.M. 1921; Cal. Pol. C. Sec. 4235; re-en. Sec. 4796, R.C.M. 1935; amd. Sec. 1, Ch. 24, L. 1945; amd. Sec. 1, Ch. 218, L. 1971; amd. Sec. 1, Ch. 199, L. 1975; amd. Sec. 19, Ch. 293, L. 1975; Sec. 16-2902, R.C.M. 1947; Ap. p. Sec. 4414, Pol. C. 1895; re-en. Sec. 3035, Rev. C. 1907; re-en. Sec. 4801, R.C.M. 1921; Cal. Pol. C. Sec. 4238; re-en. Sec. 4801, R.C.M. 1935; Sec. 16-2907, R.C.M. 1947; R.C.M. 1947, 16-2902(part), 16-2907; amd. Sec. 14, Ch. 443, L. 1979; amd. Sec. 1, Ch. 701, L. 1979; amd. Sec. 1, Ch. 377, L. 1981; amd. Sec. 1, Ch. 366, L. 1993; amd. Sec. 11, Ch. 420, L. 1993; amd. Sec. 3, Ch. 391, L. 1995.

Compiler's Comments

1995 Amendment: Chapter 391 in (3), at beginning, inserted exception clause; and made minor changes in style. Amendment effective April 12, 1995.

Retroactive Applicability: Section 5, Ch. 391, L. 1995, provided: "[This act] applies retroactively, within the meaning of 1-2-109, to deaths of holders of nonprobate interests occurring after July 1, 1979."

Cross-References

Nonprobate interests in real estate, 72-16-502.

7-4-2614. Records of certificates of discharge from military service. It is the duty of the county clerk of any county of this state to record, without charge and in a book kept for that purpose, the certificate of discharge of an honorably discharged person, regardless of sex, who served with the United States forces.

History: En. Sec. 2, Ch. 211, L. 1921; re-en. Sec. 5654, R.C.M. 1921; re-en. Sec. 5654, R.C.M. 1935; amd. Sec. 1, Ch. 54, L. 1943; Sec. 77-801, R.C.M. 1947; amd. and redes. 16-2927 by Sec. 3, Ch. 94, L. 1974; R.C.M. 1947, 16-2927.

7-4-2615. Records of water users' associations. In each county where water users' associations organized in conformity with the federal reclamation laws of the United States exist, the county commissioners are required to furnish the county recorder with books for the proper recording of stock subscriptions, contracts, articles of incorporation, and stock certificates of such associations, containing printed blank forms of the stock subscriptions, contracts, articles of incorporation, and stock certificates. The forms are to be prepared by the attorney general and used by the county recorder for the recording of all such stock subscriptions, contracts, articles of incorporation, and stock certificates.

History: En. Sec. 1, Ch. 68, L. 1909; re-en. Sec. 4467, R.C.M. 1921; re-en. Sec. 4467, R.C.M. 1935; R.C.M. 1947, 16-1101(part); amd. Sec. 15, Ch. 443, L. 1979.

Cross-References

Water users associations, Title 85, ch. 6, part 1.

7-4-2616. Map book. The county clerk must keep a well-bound book which must contain maps of towns, villages, or additions to the same within his county, together with the description, acknowledgment, or other writing thereon.

History: En. Sec. 4416, Pol. C. 1895; re-en. Sec. 3037, Rev. C. 1907; re-en. Sec. 4803, R.C.M. 1921; re-en. Sec. 4803, R.C.M. 1935; R.C.M. 1947, 16-2909.

7-4-2617. Procedure to record documents. (1) When any instrument, paper, or notice authorized by law to be recorded is deposited for record in the office of the county clerk, as ex officio recorder, and accompanied by the required fee, he must endorse upon the same the time it was received, noting the year, month, day, hour, and minute of its reception, and the reception of the instrument must be immediately entered in the county clerk and recorder's reception book.

(2) If the printed, written, or typed words or numbers are considered by the clerk and recorder to be illegible and not legibly reproducible, the clerk and recorder must affix to the recorded document a statement that the document is illegible and not legibly reproducible.

(3) The county clerk must record said instrument without delay, together with the acknowledgment, proofs, and certificates written upon or annexed to the same and with the plats, surveys, schedule, and other papers thereto annexed, in the order and as of the time when the same was received for record and must note at the foot of the record the exact time of its reception.

(4) The county clerk must also endorse upon each instrument, paper, or notice the time when and the book and pages or document number in which it is recorded and must thereafter deliver it, upon request, to the party leaving the same for record or to his order.

History: (1), (2)En. Sec. 4418, Pol. C. 1895; re-en. Sec. 3039, Rev. C. 1907; re-en. Sec. 4805, R.C.M. 1921; Cal. Pol. C. Sec. 4241; amd. Sec. 1, Ch. 2, L. 1929; amd. Sec. 1, Ch. 27, L. 1931; re-en. Sec. 4805, R.C.M. 1935; amd. Sec. 1, Ch. 11, L. 1949; Sec. 16-2911, R.C.M. 1947; (3)En. Sec. 4419, Pol. C. 1895; re-en. Sec. 3040, Rev. C. 1907; re-en. Sec. 4806, R.C.M. 1921; Cal. Pol. C. Sec. 4242; re-en. Sec. 4806, R.C.M. 1935; Sec. 16-2912, R.C.M. 1947; R.C.M. 1947, 16-2911(part), 16-2912; amd. Sec. 1, Ch. 551, L. 1983; amd. Sec. 1, Ch. 82, L. 1989.

7-4-2618. Addresses required to record certain documents. The county clerk shall not receive for recording any deed, mortgage, or assignment of mortgage unless the post-office address of the grantee, mortgagee, or assignee of the mortgagee, as the case may be, is contained therein. This requirement shall not affect the validity of the record of any instrument which has been or may be recorded.

History: En. Sec. 4418, Pol. C. 1895; re-en. Sec. 3039, Rev. C. 1907; re-en. Sec. 4805, R.C.M. 1921; Cal. Pol. C. Sec. 4241; amd. Sec. 1, Ch. 2, L. 1929; amd. Sec. 1, Ch. 27, L. 1931; re-en. Sec. 4805, R.C.M. 1935; amd. Sec. 1, Ch. 11, L. 1949; R.C.M. 1947, 16-2911(part).

7-4-2619. Indexes to recorded documents. Every county clerk, as ex officio recorder, must keep:

(1) an index of deeds, grants, and transfers and contracts to sell or convey real estate and notices of buyer's interest in real property labeled "Grantors", with each page divided into four columns headed, respectively: "Names of grantors", "Names of grantees", "Date of deeds, grants, transfers, contracts, or notices", and "Where recorded";

(2) an index of deeds and notices of buyer's interest in real property labeled "Grantees", with each page divided into four columns headed, respectively: "Names of grantees", "Names of grantors", "Date of deeds, grants, transfers, contracts, or notices", and "Where recorded";

(3) an index of mortgages labeled "Mortgages of real property", with each page divided into six columns headed, respectively: "Names of mortgagors", "Names of mortgagees", "Dates of mortgages", "Where recorded", "When filed", and "When canceled";

(4) an index of mortgages labeled "Mortgages of real property", with each page divided into six columns headed, respectively: "Names of mortgagees", "Names of mortgagors", "Dates of mortgages", "Where recorded", "When filed", and "When canceled";

(5) an index of mortgages labeled "Releases of mortgages of real property—Mortgagees", with each page divided into six columns headed, respectively: "Parties whose mortgages are released", "Parties releasing", "Date of release", "Where recorded", "Dates of mortgages released", and "Where mortgages released are recorded";

(6) an index of powers of attorney labeled "Powers of attorney", with each page divided into five columns headed, respectively: "Names of parties executing powers", "To whom powers are executed", "Date of powers", "Date of recording", and "Where powers are recorded";

(7) an index of leases labeled "Leases", with each page divided into four columns headed, respectively: "Names of lessors", "Names of lessees", "Date of leases", and "When and where recorded";

(8) an index of leases labeled “Lessees”, with each page divided into four columns headed, respectively: “Names of lessees”, “Names of lessors”, “Date of leases”, and “When and where recorded”;

(9) an index of marriage certificates labeled “Marriage certificates—Men”, with each page divided into six columns headed, respectively: “Men married”, “To whom married”, “When married”, “By whom married”, “Where married”, and “Where certificates are recorded”;

(10) an index of marriage certificates labeled “Marriage certificates—Women”, with each page divided into six columns headed, respectively: “Women married” (and under this head placing the family names of the women), “To whom married”, “When married”, “By whom married”, “Where married”, and “Where certificates are recorded”;

(11) an index of assignments of mortgages and leases labeled “Assignments of mortgages and leases—Assignors”, with each page divided into five columns headed, respectively: “Assignors”, “Assignees”, “Instruments assigned”, “Date of assignment”, and “When and where recorded”;

(12) an index of assignments of mortgages and leases labeled “Assignments of mortgages and leases—Assignees”, with each page divided into five columns headed, respectively: “Assignees”, “Assignors”, “Instruments”, “Date of assignment”, and “When and where recorded”;

(13) an index of wills labeled “Wills”, with each page divided into four columns headed, respectively: “Names of testators”, “Date of will”, “Date of probate”, and “When and where recorded”;

(14) an index of official bonds labeled “Official bonds”, with each page divided into five columns headed, respectively: “Names of officers”, “Names of offices”, “Date of bond”, “Amount of bond”, and “When and where recorded”;

(15) an index of notices of construction liens labeled “Construction liens”, with each page divided into three columns headed, respectively: “Parties claiming liens”, “Against whom claimed”, and “Notices, when filed”;

(16) an index to transcripts of judgments labeled “Transcripts of judgments”, with each page divided into seven columns headed, respectively: “Judgment debtors”, “Judgment creditors”, “Amount of judgment”, “Where recovered”, “When recovered”, “When transcript filed”, and “When judgment satisfied”;

(17) an index of attachments labeled “Attachments”, with each page divided into columns headed, respectively: “Parties against whom attachments are issued”, “Parties issuing attachments”, “Notices of attachments”, “When filed”, and “When attachments discharged”;

(18) an index of notices of the pendency of actions labeled “Notices of actions”, with each page divided into three columns headed, respectively: “Parties to actions”, “Notices, when recorded”, and “When filed”;

(19) an index of certificates of sale of real estate sold under execution or under orders made in any judicial proceedings labeled “Certificates of sale”, with each page divided into four columns headed, respectively: “Plaintiff”, “Defendant”, “Purchaser at sale”, and “Date of sale”;

(20) an index of the individual property of married persons labeled “Individual property of married persons”, with each page divided into five columns

headed, respectively: "Names of married persons", "Names of their spouses", "Nature of instruments recorded", "When recorded", and "Where recorded";

(21) an index to affidavits for annual work done on mining claims labeled "Annual work on mining claims", with each page divided into four columns headed, respectively: "Name of the affiant", "Name of the claim", "Where situated", and "Year when the work was done";

(22) an index of mining claims and declaratory statements labeled "Notices of location of mining claims and declaratory statements", with each page divided into four columns headed, respectively: "Locators", "Name of claim", "Notice, when filed", and "Where recorded";

(23) an index to the register of births and deaths;

(24) an index to notices and declarations of water rights;

(25) an index to the "estray and lost property book";

(26) an index to the record of assignments for the benefit of creditors, containing names of assignor and assignee, date and where recorded, and inventory, when filed;

(27) an index to financing statements as provided in Part 4 of the Uniform Commercial Code—Secured Transactions;

(28) an index to filed subdivision plats, containing number of lots, number of acres, filing date, and the location of the quarter section of each subdivision;

(29) an index to the book of maps and plats, which must contain the name of the proprietor of the town, village, or addition platted and a general description of the same;

(30) a miscellaneous index, in which must be indexed papers not hereinbefore stated.

History: (1) thru (28), (30)En. Sec. 4412, Pol. C. 1895; re-en. Sec. 3033, Rev. C. 1907; re-en. Sec. 4799, R.C.M. 1921; Cal. Pol. C. Sec. 4236; re-en. Sec. 4799, R.C.M. 1935; amd. Sec. 11-111, Ch. 264, L. 1963; amd. Sec. 2, Ch. 199, L. 1975; amd. Sec. 20, Ch. 293, L. 1975; (29)En. Sec. 4413, Pol. C. 1895; re-en. Sec. 3034, Rev. C. 1907; re-en. Sec. 4800, R.C.M. 1921; re-en. Sec. 4800, R.C.M. 1935; Sec. 16-2906, R.C.M. 1947; R.C.M. 1947, 16-2905, 16-2906; amd. Sec. 16, Ch. 443, L. 1979; amd. Sec. 2, Ch. 701, L. 1979; amd. Sec. 5, Ch. 220, L. 1985.

7-4-2620. Details relating to indexes. (1) The county clerk may keep in the same volume any two or more of the indexes mentioned in 7-4-2619, but the several indexes must be kept distinct from each other, with the volumes distinctly marked on the outside in such way as to show all the indexes kept therein.

(2) The names of the parties in the first column of the several indexes must be arranged in alphabetical order. When a conveyance is executed by a sheriff, the name of the sheriff and the party charged in the execution must both be inserted in the index. When an instrument is recorded to which an executor, administrator, or trustee is a party, the name of such executor, administrator, or trustee, together with the name of the testator or intestate or party for whom the trust is held, must be inserted in the index.

History: En. Sec. 4417, Pol. C. 1895; re-en. Sec. 3038, Rev. C. 1907; re-en. Sec. 4804, R.C.M. 1921; Cal. Pol. C. Sec. 4240; re-en. Sec. 4804, R.C.M. 1935; R.C.M. 1947, 16-2910.

7-4-2621. Search of records. Upon the application of any person and upon the payment or tender of the fees therefor, the county clerk may:

(1) make searches for conveyances, mortgages, and all other instruments, papers, or notices recorded or filed in his office; and

(2) furnish a certificate thereof, stating the names of the parties to such instruments, papers, and notices; the dates thereof; the year, month, day, hour, and minute they were recorded or filed; the extent to which they purport to affect the property to which they relate; and the book and pages where they are recorded.

History: **En. Sec. 4420, Pol. C. 1895; re-en. Sec. 3041, Rev. C. 1907; re-en. Sec. 4807, R.C.M. 1921; Cal. Pol. C. Sec. 4243; re-en. Sec. 4807, R.C.M. 1935; R.C.M. 1947, 16-2913.**

7-4-2622. Availability of records. All books or records, maps, charts, surveys, and other papers on file in the county clerk's office must be open during office hours for the inspection of any person who may desire to inspect them and may be inspected without charge. The county clerk must arrange the books of record and indexes in his office in such suitable places as to facilitate their inspection.

History: **En. Sec. 4423, Pol. C. 1895; re-en. Sec. 3044, Rev. C. 1907; re-en. Sec. 4810, R.C.M. 1921; Cal. Pol. C. Sec. 4246; re-en. Sec. 4810, R.C.M. 1935; R.C.M. 1947, 16-2916.**

Cross-References

Public documents open to inspection, Art. II, sec. 9, Mont. Const., 2-6-102.

7-4-2623. Liability of clerk relating to duties as recorder. A county clerk is liable to the party aggrieved for three times the amount of the damages which may be occasioned thereby and is punishable as provided in this code if the county clerk, as ex officio recorder to whom an instrument, proved or acknowledged according to law, or any paper or notice which may be recorded by law is delivered for record:

(1) neglects or refuses to record such instrument, paper, or notice within reasonable time after receiving the same;

(2) records any instruments, papers, or notices untruly or in any other manner than as hereinbefore directed;

(3) neglects or refuses to keep in his office such indexes as are required by this part or to make the proper entries therein;

(4) neglects or refuses to make the searches and to give the certificates required by this part or if such searches or certificates are incomplete or defective when such incompleteness or defect is due to his direct responsibility particularly affecting the property in respect to which it is requested;

(5) alters, changes, or obliterates any records deposited in his office or inserts any new matter therein.

History: **En. Sec. 4421, Pol. C. 1895; re-en. Sec. 3042, Rev. C. 1907; re-en. Sec. 4808, R.C.M. 1921; Cal. Pol. C. Sec. 4244; re-en. Sec. 4808, R.C.M. 1935; R.C.M. 1947, 16-2914.**

Cross-References

Liability exposure of local government, Title 2, ch. 9.

Actions on official bonds, 2-9-501.

Official misconduct, 45-7-401.

7-4-2624 through 7-4-2630 reserved.

7-4-2631. Fees of county clerk. (1) Except as provided in 7-4-2632, the county clerks must charge, for the use of their respective counties:

(a) for recording and indexing each certificate of location of a quartz or placer mining claim or millsite claim, including a certificate that the instrument has been recorded with seal affixed, $6;

(b) for recording and indexing each affidavit of annual labor on a mining claim, including certificate that the instrument has been recorded with seal affixed:

(i) for the first mining claim in the affidavit, $3; and

(ii) for each additional mining claim included in it, 50 cents;

(c) for filing and indexing each writ of attachment, execution, certificate of sale, lien, or other instrument required by law to be filed and indexed, $5;

(d) for filing of subdivision and townsite plats, $5 plus:

(i) for each lot up to and including 100, 50 cents;

(ii) for each additional lot in excess of 100, 25 cents;

(e) for filing certificates of surveys and amendments thereto, $5 plus 50 cents per tract or lot;

(f) for a copy of a record or paper:

(i) for the first page of any document, 50 cents, and 25 cents for each subsequent page; and

(ii) for each certification with seal affixed, $2;

(g) for searching an index record of files of the office for each year when required in abstracting or otherwise, 50 cents;

(h) for administering an oath with certificate and seal, no charge;

(i) for taking and certifying an acknowledgment, with seal affixed, for signature to it, no charge;

(j) for filing, indexing, or other services provided for by 30-9-401 through 30-9-407, the fees prescribed under those sections;

(k) for recording each stock subscription and contract, stock certificate, and articles of incorporation for water users' associations, $3;

(l) for filing a copy of notarial commission and issuing a certificate of official character of such notary public, $2;

(m) for each certified copy of a birth certificate, $5, and for each certified copy of a death certificate, $3;

(n) for filing, recording, or indexing any other instrument not expressly provided for in this section or 7-4-2632, the same fee provided in this section or 7-4-2632 for a similar service.

(2) State agencies submitting documents to be put of record shall pay the fees provided for in this section. If a state agency or political subdivision has requested an account with the county clerk, any applicable fees must be paid on a periodic basis.

History: Ap.p. Sec. 4635, Pol. C. 1895; re-en. Sec. 3168, Rev. C. 1907; amd. Sec. 1, Ch. 117, L. 1911; re-en. Sec. 4917, R.C.M. 1921; re-en. Sec. 4917, R.C.M. 1935; amd. Sec. 1, Ch. 87, L. 1941; amd. Sec. 1, Ch. 90, L. 1953; amd. Sec. 1, Ch. 202, L. 1955; amd. Sec. 2, Ch. 148, L. 1957; amd. Sec. 1, Ch. 9, L. 1959; amd. Sec. 11-115, Ch. 264, L. 1963; amd. Sec. 73, Ch. 348, L. 1974; amd. Sec. 32, Ch. 213, L. 1975; Sec. 25-231, R.C.M. 1947; Ap.p. Sec. 1, Ch. 68, L. 1909; re-en. Sec. 4467, R.C.M. 1921; re-en. Sec. 4467, R.C.M. 1935; Sec. 16-1101, R.C.M. 1947; Ap.p. Sec. 8, Ch. 198, L. 1961; Sec. 70-415, R.C.M. 1947; R.C.M. 1947, 16-1101(part), 25-231(part), 70-415(part); amd. Sec. 1, Ch. 487, L. 1979; amd. Sec. 1, Ch. 414, L. 1981; amd. Sec. 1, Ch. 467, L. 1983; amd. Sec. 2, Ch. 14, L. 1985; amd. Sec. 1, Ch. 27, L. 1985; amd. Sec. 6, Ch. 220, L. 1985; amd. Sec. 10, Ch. 370, L. 1987; amd. Sec. 1, Ch. 37, L. 1989; amd. Sec. 1, Ch. 292, L. 1989; amd. Sec. 1, Ch. 451, L. 1991.

Cross-References

Administration of fee accountability, 7-4-2511 through 7-4-2520.

7-4-2632. Fee when recording done by mechanical means. Where recording is done by photographic or similar process, the county clerk and recorder shall charge $6 for each page or fraction of a page of the instrument for recording.

History: En. Sec. 4635, Pol. C. 1895; re-en. Sec. 3168, Rev. C. 1907; amd. Sec. 1, Ch. 117, L. 1911; re-en. Sec. 4917, R.C.M. 1921; re-en. Sec. 4917, R.C.M. 1935; amd. Sec. 1, Ch. 87, L. 1941; amd. Sec. 1, Ch. 90, L. 1953; amd. Sec. 1, Ch. 202, L. 1955; amd. Sec. 2, Ch. 148, L. 1957; amd. Sec. 1, Ch. 9, L. 1959; amd. Sec. 11-115, Ch. 264, L. 1963; amd. Sec. 73, Ch. 348, L. 1974; amd. Sec. 32, Ch. 213, L. 1975; R.C.M. 1947, 25-231(8); amd. Sec. 2, Ch. 414, L. 1981; amd. Sec. 2, Ch. 467, L. 1983; amd. Sec. 2, Ch. 27, L. 1985; amd. Sec. 1, Ch. 355, L. 1991.

7-4-2633. Repealed. Sec. 3, Ch. 414, L. 1981.

History: En. Sec. 4635, Pol. C. 1895; re-en. Sec. 3168, Rev. C. 1907; amd. Sec. 1, Ch. 117, L. 1911; re-en. Sec. 4917, R.C.M. 1921; re-en. Sec. 4917, R.C.M. 1935; amd. Sec. 1, Ch. 87, L. 1941; amd. Sec. 1, Ch. 90, L. 1953; amd. Sec. 1, Ch. 202, L. 1955; amd. Sec. 2, Ch. 148, L. 1957; amd. Sec. 1, Ch. 9, L. 1959; amd. Sec. 11-115, Ch. 264, L. 1963; amd. Sec. 73, Ch. 348, L. 1974; amd. Sec. 32, Ch. 213, L. 1975; R.C.M. 1947, 25-231(part).

7-4-2634. Fees to be noted on recorded documents. On each instrument delivered for recording, the county clerk shall endorse on it all charges made for each service, and the endorsement must be recorded as a part of the instrument in the county clerk's office to document the charges entered on the fee book or reception record in the county clerk's office.

History: En. Sec. 4635, Pol. C. 1895; re-en. Sec. 3168, Rev. C. 1907; amd. Sec. 1, Ch. 117, L. 1911; re-en. Sec. 4917, R.C.M. 1921; re-en. Sec. 4917, R.C.M. 1935; amd. Sec. 1, Ch. 87, L. 1941; amd. Sec. 1, Ch. 90, L. 1953; amd. Sec. 1, Ch. 202, L. 1955; amd. Sec. 2, Ch. 148, L. 1957; amd. Sec. 1, Ch. 9, L. 1959; amd. Sec. 11-115, Ch. 264, L. 1963; amd. Sec. 73, Ch. 348, L. 1974; amd. Sec. 32, Ch. 213, L. 1975; R.C.M. 1947, 25-231(17); amd. Sec. 7, Ch. 274, L. 1981; amd. Sec. 1, Ch. 287, L. 1983; amd. Sec. 5, Ch. 179, L. 1995.

Compiler's Comments

1995 Amendment: Chapter 179 substituted "to document the charges entered" for "in order that the department of commerce may verify the charges and may see that they have been properly entered"; and made minor changes in style. Amendment effective July 1, 1995.

Cross-References

Fee receipt required, 7-4-2517.

7-4-2635. Records preservation fund authorized. (1) The board of county commissioners shall establish a records preservation fund for the purpose of preserving the records maintained by the county clerk and recorder. The county clerk and recorder is responsible for expenditures from the fund and shall use the money for records preservation.

(2) The county clerk and recorder shall deposit $1 of the fee received under 7-4-2632 into the records preservation fund.

(3) The governing body of the county may transfer to the general fund any money in the records preservation fund that is not needed for records preservation.

History: En. Sec. 2, Ch. 355, L. 1991.

Part 27
Office of County Attorney

Part Cross-References

Attorney General — supervisory control over County Attorneys, 2-15-501.

Compensation of County Attorney, 7-4-2503, 7-4-2504.

County Attorney or designee to serve on adult protective service team, 52-3-805.

7-4-2701. Qualifications for county attorney in certain counties. No person is eligible for the position of county attorney in counties which have a population in excess of 30,000 unless he is a citizen of the United States who has resided in the state 2 years immediately before taking office and has been admitted to the practice of law for at least 5 years prior to the date of election or appointment.

History: En. 16-3107 by Sec. 2, Ch. 102; L. 1975; R.C.M. 1947, 16-3107.

Cross-References

Admission to practice of law, Art. VII, sec. 2, Mont. Const.; Title 37, ch. 61.

7-4-2702. Procedure to fill vacancy in office of county attorney. (1) Whenever a vacancy in the office of county attorney shall arise in any county and there is no licensed attorney residing in said county who is eligible to be appointed to fill said vacancy, the board of county commissioners is authorized and has the power to employ special counsel from without the county, who shall be designated and officially known as the "acting county attorney" and who during said employment shall be vested with all the powers and shall perform all the duties of the county attorney, including the filing of all complaints, informations, and/or other proceedings for and in which the county or state may be a party and the prosecution and defense of the same to the same extent and with the same force and effect as if he were the regular qualified county attorney. Said attorney shall be paid a monthly compensation not to exceed the monthly salary of the county attorney. Whenever any such attorney is employed, the county clerk of said county shall certify to the attorney general the name of such acting county attorney and the fact of his employment.

(2) Whenever any licensed attorney shall establish residence in said county and become eligible to hold the office of county attorney, it shall be the duty of the board to appoint such attorney to fill said vacancy, and the employment of said special attorney shall thereupon cease.

History: En. Sec. 4, Ch. 61, L. 1909; re-en. Sec. 4486, R.C.M. 1921; re-en. Sec. 4486, R.C.M. 1935; amd. Sec. 1, Ch. 138, L. 1947; R.C.M. 1947, 16-1126(part).

Cross-References

Certification to Department of Administration required for compensation, 7-4-2502.

7-4-2703. Limitation on number of deputies. In counties of the first and second class, the county attorney may appoint one chief deputy and one deputy. In all other counties, the county attorney may appoint a chief deputy or a deputy only with the approval of the board of county commissioners.

History: En. Sec. 2, Ch. 75, L. 1905; re-en. Sec. 3128, Rev. C. 1907; re-en. Sec. 4880, R.C.M. 1921; re-en. Sec. 4880, R.C.M. 1935; amd. Sec. 1, Ch. 97, L. 1939; amd. Sec. 2, Ch. 87, L. 1943; amd. Sec. 7, Ch. 391, L. 1973; R.C.M. 1947, 16-3706(part); amd. Sec. 17, Ch. 443, L. 1979.

Cross-References

Authorization to exceed limitation on number of deputies, 7-4-2402.

Veterans' public employment preference, Title 39, ch. 29.

Handicapped persons' public employment preference, Title 39, ch. 30.

7-4-2704. Limitations on activities of county attorneys and deputy county attorneys. (1) The county attorney, except for his own services, must not present any claim, account, or other demand for allowance against the county or in any way advocate the relief asked on the claim or demand made by another.

(2) In each county with a population in excess of 30,000, the county attorney is prohibited from engaging in the private practice of law or sharing directly or indirectly in the profits of any private practice of law, except that he may represent himself and his immediate family and except as provided in subsection (4).

(3) Any deputy county attorney in a county with a population in excess of 30,000 who is paid 70% or more of the county attorney's salary is prohibited from engaging in the private practice of law or sharing directly or indirectly in the profits of any private practice of law except as to those matters in which he has a direct interest and except as provided in subsection (4).

(4) Any elected or appointed county attorney and any deputy county attorney shall, upon demonstration of need to the board of county commissioners, be granted a period of time, not to exceed 3 months from the date he takes office, to complete any pending matters remaining from any previous private practice of law. During such time the county attorney and any appointed deputy are bound by the customary rules of ethics applicable to attorneys at law.

History: Ap. p. Sec. 4453, Pol. C. 1895; re-en. Sec. 3055, Rev. C. 1907; re-en. Sec. 4822, R.C.M. 1921; Cal. Pol. C. Sec. 4258; re-en. Sec. 4822, R.C.M. 1935; Sec. 16-3104, R.C.M. 1947; Ap. p. Secs. 1, 4, Ch. 102, L. 1975; Secs. 16-3106, 16-3108, R.C.M. 1947; R.C.M. 1947, 16-3104, 16-3106, 16-3108; amd. Sec. 1, Ch. 300, L. 1981.

7-4-2705. Employment of special counsel in certain counties. Except in counties of the first class, the board of county commissioners has the power, whenever in its judgment the ends of justice or the interest of the county require it, to employ or authorize the county attorney to employ special counsel to assist in the prosecution of any criminal case pending in such county or to represent said county in any civil action in which such county is a party.

History: En. Sec. 4, Ch. 61, L. 1909; re-en. Sec. 4486, R.C.M. 1921; re-en. Sec. 4486, R.C.M. 1935; amd. Sec. 1, Ch. 138, L. 1947; R.C.M. 1947, 16-1126(part).

Cross-References

Classification of counties, 7-1-2111.

7-4-2706. County attorney to be full or part time — resolution — salary. (1) In any county with a population of less than 30,000, the county commissioners may, upon the consent of the county attorney, on July 1 of any year by resolution establish the office of county attorney as a full-time position subject to the provisions of 7-4-2701 and 7-4-2704. The salary for this position is the salary provided by 7-4-2503 for the office of county attorney in a county with a population in excess of 30,000.

(2) In any county in which the office of county attorney has been established as a full-time position under subsection (1), the county commissioners may, by resolution and upon the consent of the county attorney, establish the office as a part-time position on July 1 of any year.

History: En. Sec. 1, Ch. 669, L. 1979; amd. Sec. 1, Ch. 301, L. 1981.

7-4-2707. Contract for services of county attorney from another county. The county commissioners of any county may, upon the consent of the county attorney, by agreement with the commissioners and county attorney of any other county, contract in writing to employ any other county attorney or attorney member of his staff to perform civil or criminal legal services for the county at a reasonable rate. The provisions of this section are subject to the provisions of interlocal cooperative agreements.

History: **En. Sec. 2, Ch. 669, L. 1979.**

Cross-References

Interlocal cooperation agreements, Title 7, ch. 11, part 1.

7-4-2708. Contract for services of any other attorney. In any county, the county commissioners may employ any attorney licensed in Montana to perform any legal service in connection with the civil business of the county.

History: **En. Sec. 3, Ch. 669, L. 1979; amd. Sec. 1, Ch. 58, L. 1989.**

7-4-2709 and 7-4-2710 reserved.

7-4-2711. County attorney to be legal adviser of county and other subdivisions. (1) The county attorney is the legal adviser of the board of county commissioners. He must attend their meetings when required and must attend and oppose all claims and accounts against the county which are unjust or illegal. He must defend all suits brought against his county.

(2) The county attorney must:

(a) give, when required and without fee, his opinion in writing to the county, district, and township officers on matters relating to the duties of their respective offices;

(b) act as counsel, without fee, for fire districts and fire service areas in unincorporated territories, towns, or villages within his county;

(c) when requested by a conservation district pursuant to 76-15-319, act as counsel, without fee;

(d) when requested by a weed district pursuant to 7-22-2103, act as counsel, without fee; and

(e) when requested by a county hospital board pursuant to 7-34-2115, act as counsel, without fee, unless the legal action requested involves the county commissioners.

History: **Ap. p. Sec. 4451, Pol. C. 1895; re-en. Sec. 3053, Rev. C. 1907; re-en Sec. 4820, R.C.M. 1921; Cal. Pol. C. Sec. 4257; re-en. Sec. 4820, R.C.M. 1935; Sec. 16-3102, R.C.M. 1947; Ap. p. Sec. 4450, Pol. C. 1895; amd. Sec. 1, p. 76, L. 1899; re-en. Sec. 3052, Rev. C. 1907; re-en. Sec. 4819, R.C.M. 1921; Cal. Pol. C. Sec. 4256; amd. Sec. 1, Ch. 187, L. 1935; re-en. Sec. 4819, R.C.M. 1935; amd. Sec. 1, Ch. 17, L. 1965; Sec. 16-3101, R.C.M. 1947; R.C.M. 1947, 16-3101(part), 16-3102; amd. Sec. 1, Ch. 533, L. 1979; amd. Sec. 1, Ch. 52, L. 1989; amd. Sec. 1, Ch. 7, L. 1991; amd. Sec. 1, Ch. 88, L. 1991.**

7-4-2712. Prosecutorial duties. The county attorney is the public prosecutor and must:

(1) institute proceedings before magistrates for the arrest of persons charged with or reasonably suspected of public offenses when he has information that such offenses have been committed and for that purpose, whenever not otherwise officially engaged, must attend upon the magistrate in cases of arrest and attend before and give advice to the grand jury whenever cases are presented to them for their consideration;

(2) draw all indictments and informations.

History: **En. Sec. 4450, Pol. C. 1895; amd. Sec. 1, p. 76, L. 1899; re-en. Sec. 3052, Rev. C. 1907; re-en. Sec. 4819, R.C.M. 1921; Cal. Pol. C. Sec. 4256; amd. Sec. 1, Ch. 187, L. 1935; re-en. Sec. 4819, R.C.M. 1935; amd. Sec. 1, Ch. 17, L. 1965; R.C.M. 1947, 16-3101(part).**

Cross-References

Supervision by Attorney General, 2-15-501.

7-4-2713. Actions to recover money. The county attorney must prosecute all recognizances forfeited in the courts of record and all actions for the recovery of debts, fines, penalties, and forfeitures accruing to the state or his county.

History: En. Sec. 4450, Pol. C. 1895; amd. Sec. 1, p. 76, L. 1899; re-en. Sec. 3052, Rev. C. 1907; re-en. Sec. 4819, R.C.M. 1921; Cal. Pol. C. Sec. 4256; amd. Sec. 1, Ch. 187, L. 1935; re-en. Sec. 4819, R.C.M. 1935; amd. Sec. 1, Ch. 17, L. 1965; R.C.M. 1947, 16-3101(part).

7-4-2714. Recovery of illegally paid money. Whenever the board of county commissioners, without authority of law, orders any money paid as a salary or fee or for any other purpose and such money has been actually paid or whenever any other county officer has drawn a warrant in his own favor or in favor of any other person without being authorized by the board or by law and the same has been paid, the county attorney is empowered and it is his duty to institute an action in the name of the county against such person to recover the money and 25% damages for the use thereof. No order of the board therefor is necessary to maintain this suit. Whenever the money has not been paid on the order or warrant, it is the duty of the county attorney, upon receiving notice thereof, to commence an action in the name of the county for restraining the payment of the same, and no order of the board is necessary to maintain the action.

History: En. Secs. 4200, 4452, Pol. C. 1895; re-en. Secs. 2880, 3054, Rev. C. 1907; re-en. Secs. 4451, 4821, R.C.M. 1921; re-en. Secs. 4451, 4821, R.C.M. 1935; R.C.M. 1947, 16-812, 16-3103; amd. Sec. 18, Ch. 443, L. 1979.

7-4-2715. Records and reports. The county attorney must:

(1) keep a register of all official business, in which must be entered a note of every action, whether criminal or civil, prosecuted officially and of the proceedings therein;

(2) deliver receipts for money or property received in his official capacity and file duplicates thereof with the county treasurer;

(3) on the first Monday of January, April, July, and October in each year file with the county clerk an account, verified by his oath, of all money received by him in his official capacity during the preceding 3 months and at the same time pay it over to the county treasurer.

History: En. Sec. 4450, Pol. C. 1895; amd. Sec. 1, p. 76, L. 1899; re-en. Sec. 3052, Rev. C. 1907; re-en. Sec. 4819, R.C.M. 1921; Cal. Pol. C. Sec. 4256; amd. Sec. 1, Ch. 187, L. 1935; re-en. Sec. 4819, R.C.M. 1935; amd. Sec. 1, Ch. 17, L. 1965; R.C.M. 1947, 16-3101(4), (5), (8).

Cross-References

Report to County Treasurer, 7-6-2117.

7-4-2716. Duties related to state matters. The county attorney must:

(1) attend the district court and conduct, on behalf of the state, all prosecutions for public offenses and represent the state in all matters and proceedings to which it is a party or in which it may be beneficially interested, at all times and in all places within the limits of his county;

(2) when ordered or directed by the attorney general to do so, promptly institute and diligently prosecute in the proper court and in the name of the state of Montana any criminal or civil action or special proceeding;

(3) defend all suits brought against the state.

History: **En. Sec. 4450, Pol. C. 1895; amd. Sec. 1, p. 76, L. 1899; re-en. Sec. 3052, Rev. C. 1907; re-en. Sec. 4819, R.C.M. 1921; Cal. Pol. C. Sec. 4256; amd. Sec. 1, Ch. 187, L. 1935; re-en. Sec. 4819, R.C.M. 1935; amd. Sec. 1, Ch. 17, L. 1965; R.C.M. 1947, 16-3101(part).**

Cross-References

Supervision by Attorney General, 2-15-501.

7-4-2717. Other duties. The county attorney must perform such other duties as are prescribed by law.

History: **En. Sec. 4454, Pol. C. 1895; re-en. Sec. 3056, Rev. C. 1907; re-en. Sec. 4823, R.C.M. 1921; re-en. Sec. 4823, R.C.M. 1935; R.C.M. 1947, 16-3105.**

Part 28

Office of County Surveyor

7-4-2801. Qualifications for county surveyor and deputies. (1) Except as provided in subsection (3), a county surveyor shall be a registered professional engineer or registered professional land surveyor who shall have been in active practice of his profession for at least 3 years and who shall have had responsible charge of work as principal or assistant for at least 1 year. Graduation from a school of engineering or land surveying shall be considered as equivalent to 2 years of active practice.

(2) All deputies must also have a practical knowledge of engineering or land surveying.

(3) When the office of county surveyor is consolidated with another county office within the county, the requirements of subsection (1) are waived. Unless the officeholder has the qualifications prescribed in subsection (1), he shall, with the approval of the governing body, contract for the services of a person with those qualifications to perform the duties of county surveyor.

History: **En. Sec. 1, Ch. 50, L. 1919; re-en. Sec. 4835, R.C.M. 1921; re-en. Sec. 4835, R.C.M. 1935; R.C.M. 1947, 16-3301; amd. Sec. 1, Ch. 174, L. 1985; amd. Sec. 1, Ch. 622, L. 1985.**

Cross-References

Consolidation of county offices, Title 7, ch. 4, part 23.

Licensing of land surveyors, Title 37, ch. 67, part 3.

Veterans' public employment preference, Title 39, ch. 29.

Handicapped persons' public employment preference, Title 39, ch. 30.

7-4-2802. Employment of assistants to surveyor. If a party for whom the county survey is made does not furnish the chainmen and markers, the surveyor may employ the necessary chainmen and markers and receive the reasonable hire of all assistants necessarily employed.

History: **En. Sec. 4474, Pol. C. 1895; re-en. Sec. 3061, Rev. C. 1907; re-en. Sec. 4843, R.C.M. 1921; Cal. Pol. C. Sec. 4272; re-en. Sec. 4843, R.C.M. 1935; R.C.M. 1947, 16-3309.**

Cross-References

Veterans' public employment preference, Title 39, ch. 29.

Handicapped persons' public employment preference, Title 39, ch. 30.

7-4-2803. Situations involving use of other surveyors. (1) Whenever the county surveyor is interested in any land the title to which is in dispute and a survey thereof is necessary, the court must direct the survey to be made by some disinterested person. The person so appointed is, for the purpose, authorized to administer and certify oaths. He shall return the survey, verified by his affidavit annexed thereto, and receive for his services the same fees as the county surveyor would be entitled to for similar services.

(2) Whenever the county surveyor neglects, refuses, or is incompetent to perform the duties prescribed in this part, it is the duty of the board of county commissioners to employ another competent civil engineer, who shall be subject to the laws governing the county surveyor.

History: (1)En. Sec. 4475, Pol. C. 1895; re-en. Sec. 3062, Rev. C. 1907; re-en. Sec. 4844, R.C.M. 1921; Cal. Pol. C. Sec. 4275; re-en. Sec. 4844, R.C.M. 1935; Sec. 16-3310, R.C.M. 1947; (2)En. Sec. 4478, Pol. C. 1895; re-en. Sec. 3065, Rev. C. 1907; re-en. Sec. 4847, R.C.M. 1921; re-en. Sec. 4847, R.C.M 1935; Sec. 16-3313, R.C.M 1947; R.C.M. 1947, 16-3310, 16-3313; amd. Sec. 19, Ch. 443, L. 1979.

7-4-2804 through 7-4-2810 reserved.

7-4-2811. Function of county surveyor. (1) The county surveyor shall work under the direction of the board of county commissioners. He shall have no power or authority to incur any indebtedness on the part of the county without the prior order or approval of the board. The county surveyor shall be provided with suitable office, together with necessary equipment, to perform his various duties as prescribed by law.

(2) He shall make all surveys, establish all grades, and prepare plans, specifications, and estimates.

(3) He shall make progress reports and estimates of all work and such other facts in relation thereto as may be required by the board.

History: Ap. p. Sec. 2, Ch. 50, L. 1919; amd. Sec. 1, Ch. 29, Ex. L. 1919; re-en. Sec. 4836, R.C.M. 1921; re-en. Sec. 4836, R.C.M. 1935; amd. Sec. 12-104, Ch. 197, L. 1965; amd. Sec. 1, Ch. 274, L. 1967; Sec. 16-3302, R.C.M. 1947; Ap. p. Sec. 4, Ch. 50, L. 1919; re-en. Sec. 4838, R.C.M. 1921; re-en. Sec. 4838, R.C.M. 1935; Sec. 16-3304, R.C.M. 1947; R.C.M. 1947, 16-3302(1) thru (3), 16-3304.

7-4-2812. Duties related to roads and bridges. (1) The board of county commissioners may assign responsibility for the supervision and direction of all highways, bridges, and causeways within the county to a county surveyor or to a county road superintendent. The board may allocate the duties between the surveyor and the superintendent.

(2) The duties are to:

(a) keep all highways and bridges free and clear of all obstructions;

(b) grade, maintain, and repair all highways;

(c) construct, maintain, and repair all bridges and causeways;

(d) make all surveys;

(e) establish grades;

(f) prepare plans, specifications, and estimates;

(g) keep accurate cost data;

(h) approve all claims against the county for all highway, bridge, and causeway construction, maintenance, and repair, prior to presentation to the board of county commissioners;

(i) employ and assign deputies and staff;

(j) purchase and secure all highway and bridge machinery and machinery equipment and tools to be used upon highways and bridges, with the approval of the board;

(k) purchase and secure all highway, bridge, and causeway supplies and materials, with the approval of the board;

(l) from time to time, make reports and estimates of all matters relating to highways and bridges when required by the board; and

(m) perform other duties required by law.

(3) The surveyor must receive the annual salary provided by law for salaried county surveyors and other county officials.

History: En. Sec. 2, Ch. 50, L. 1919; amd. Sec. 1, Ch. 29, Ex. L. 1919; re-en. Sec. 4836, R.C.M. 1921; re-en. Sec. 4836, R.C.M. 1935; amd. Sec. 12-104, Ch. 197, L. 1965; amd. Sec. 1, Ch. 274, L. 1967; R.C.M. 1947, 16-3302(4); amd. Sec. 1, Ch. 336, L. 1995.

Compiler's Comments

1995 Amendment: Chapter 336 in (1), at beginning of first sentence, substituted "The board of county commissioners may assign responsibility for the supervision" for "The county surveyor of all counties having a total registered vote of 20,000 or over at the last general election shall be responsible for supervision" and at end, after "county", inserted "to a county surveyor or to a county road superintendent" and inserted second sentence allowing Board to allocate duties between surveyor and superintendent; at beginning of (2) substituted "The duties are to" for "In the exercise of such control, supervision, and direction, he shall"; in (2)(b) substituted "grade, maintain, and repair all highways" for "cause highways to be graded, when needed, and maintain and repair the same"; in (2)(c) substituted "construct, maintain, and repair all bridges and causeways" for "cause all bridges and causeways to be made, when needed, and keep the same maintained and in good repair and renew the same when destroyed"; in (2)(i) substituted "employ and assign deputies and staff" for "employ deputies, men, and teams and discharge at his pleasure such deputies, men, and teams and determine how, when, and where such deputies, men, and teams shall work"; in (2)(m), after "duties", deleted "as are now or which may be hereafter"; at beginning of (3) substituted "The surveyor must" for "In the exercise of such control, supervision, and direction, he shall"; and made minor changes in style.

Cross-References

Salary of County Surveyors, 7-4-2503.

7-4-2813. Maintenance of records. (1) The county surveyor shall keep in his office a record of all surveys and plats made or caused to be made by him, to be recorded in proper books provided for that purpose. He shall also keep on file and for record, in suitable plat books provided therefor, copies of all plats made or caused to be made by him and have recorded therein a description of every public highway within the county.

(2) All such books of record, together with original drawings and original book or books of field notes, calculations, and computations, are and shall remain the property of the county and shall be preserved as such.

History: En. Sec. 3, Ch. 50, L. 1919; re-en. Sec. 4837, R.C.M. 1921; re-en. Sec. 4837, R.C.M. 1935; R.C.M. 1947, 16-3303.

7-4-2814. Preparation of surveys. (1) The county surveyor must make any survey that may be required by order of the court or upon application of any person; keep a correct and fair record of all surveys made by him; number them progressively in the order made; and preserve a copy of the field notes and calculations of each survey and endorse thereon its proper number, a copy of which and a fair and accurate plat, together with the certificate of survey, must be furnished by him to any person upon payment of the fees allowed by law. In all surveys the courses must be expressed according to the true meridian and the variation of the magnetic meridian from the true meridian must be expressed on the plat, with the date of the survey.

(2) He must also keep a correct and plain record of all surveys made by him for the county or for individuals or corporations which pertain to the public roads or bridges, in a book provided for that purpose by the county, which shall be transmitted to his successor in office.

History: Ap. p. Sec. 4470, Pol. C. 1895; re-en. Sec. 3057, Rev. C. 1907; re-en. Sec. 4839, R.C.M. 1921; Cal. Pol. C. Sec. 4268; re-en. Sec. 4839, R.C.M. 1935; Sec. 16-3305, R.C.M. 1947; Ap. p. Sec. 4473, Pol. C. 1895; re-en. Sec. 3060, Rev. C. 1907; re-en. Sec. 4842, R.C.M. 1921; Cal. Pol. C. Sec. 4271; re-en. Sec. 4842, R.C.M 1935; Sec. 16-3308, R.C.M 1947; R.C.M. 1947, 16-3305, 16-3308.

Cross-References

Fees — accountability, 7-4-2511 through 7-4-2520.

7-4-2815. Surveys involving land in two counties. (1) Any person owning or claiming lands which are divided by county lines and wishing to have the same surveyed may apply to the surveyor of any county in which any part of such land is situated. On such application being made, the county surveyor must make the survey, which is as valid as though the lands were situated entirely within the county.

(2) When land the title to which is in dispute before any court is divided by a county line, the court making an order of survey may direct the order to the surveyor of any county in which any part of the land is situated.

History: (1)En. Sec. 4471, Pol. C. 1895; re-en. Sec. 3058, Rev. C. 1907; re-en. Sec. 4840, R.C.M. 1921; Cal. Pol. C. Sec. 4269; re-en. Sec. 4840, R.C.M. 1935; Sec. 16-3306, R.C.M. 1947; (2)En. Sec. 4472, Pol. C. 1895; re-en. Sec. 3059, Rev. C. 1907; re-en. Sec. 4841, R.C.M. 1921; Cal. Pol. C. Sec. 4270; re-en. Sec. 4841, R.C.M 1935; Sec. 16-3307, R.C.M 1947; R.C.M. 1947, 16-3306, 16-3307.

7-4-2816 through 7-4-2820 reserved.

7-4-2821. Fees of county surveyor. The board of county commissioners shall set the county surveyor's fees by resolution.

History: En. Sec. 4639, Pol. C. 1895; re-en. Sec. 3172, Rev. C. 1907; re-en. Sec. 4921, R.C.M. 1921; re-en. Sec. 4921, R.C.M. 1935; amd. Sec. 1, Ch. 199, L. 1953; R.C.M. 1947, 25-235; amd. Sec. 1, Ch. 232, L. 1979.

Cross-References

Statement of fees to be posted, 7-4-2518.

Part 29

Office of County Coroner

Part Cross-References

Salary of County Coroner, 7-4-2504.

7-4-2901. Appointment of deputy coroners. (1) The coroner, with approval of the county commissioners, may appoint one or more deputy coroners to assist him or act in his absence.

(2) At the time of appointment, a deputy coroner or acting coroner must meet the qualifications required of a coroner as provided in 7-4-2904(1) and (2)(a). Within a reasonable time after appointment, a deputy must successfully complete the basic coroner course, as provided for in 7-4-2905(2)(a). The deputy must also meet the requirements for advanced education as provided in 7-4-2905(2)(b).

(3) A deputy coroner may be the coroner or qualified deputy coroner from another county.

History: En. 82-444 by Sec. 18, Ch. 530, L. 1977; R.C.M. 1947, 82-444; amd. Sec. 3, Ch. 367, L. 1987.

Cross-References

Veterans' public employment preference, Title 39, ch. 29.

Handicapped persons' public employment preference, Title 39, ch. 30.

7-4-2902. Vacancy in office of county coroner or disqualification of coroner. (1) The coroner, or the board of county commissioners if the coroner is unable or refuses to act, shall request the coroner or a qualified deputy coroner of another county to be acting county coroner if the coroner:

(a) is absent or unable to attend to his duties or if the office of coroner is vacant and there are no qualified deputies available;

(b) is related to the deceased;

(c) is a potential party in an action concerning the death or his inquiry into the death may pose a conflict of interest;

(d) has not successfully completed the basic coroner course required in 7-4-2905 and there are no qualified deputies available; or

(e) is disqualified under the provisions of 46-4-201.

(2) The salary of and expenses incurred by an acting coroner on behalf of a requesting county are an allowable charge against the requesting county.

History: (1)En. Sec. 4494, Pol. C. 1895; re-en. Sec. 3070, Rev. C. 1907; re-en. Sec. 4852, R.C.M. 1921; Cal. Pol. C. Sec. 4289; re-en. Sec. 4852, R.C.M. 1935; Sec. 16-3405, R.C.M. 1947; (2)En. Sec. 4640, Pol. C. 1895; re-en. Sec. 3173, Rev. C. 1907; re-en. Sec. 4922, R.C.M. 1921; amd. Sec. 1, Ch. 59, L. 1933; re-en. Sec. 4922, R.C.M. 1935; amd. Sec. 1, Ch. 9, L. 1937; amd. Sec. 1, Ch. 211, L. 1951; amd. Sec. 9, Ch. 439, L. 1975; Sec. 25-236, R.C.M. 1947; R.C.M. 1947, 16-3405, 25-236(part); amd. Sec. 3, Ch. 371, L. 1979; amd. Sec. 2, Ch. 367, L. 1987.

7-4-2903. Stenographer for coroner in certain counties. In each county having a population of 45,000 or more by the latest federal census enumeration, the coroner may, with the consent of the county commissioners, appoint a stenographer. The stenographer shall hold such position during the pleasure of the coroner making the appointment and shall receive as salary a sum to be fixed by the board of county commissioners, to be paid monthly out of the contingent fund of the county upon the order of the board.

History: En. Sec. 1, Ch. 8, L. 1911; re-en. Sec. 4855, R.C.M. 1921; re-en. Sec. 4855, R.C.M. 1935; amd. Sec. 1, Ch. 233, L. 1947; amd. Sec. 1, Ch. 211, L. 1951; R.C.M. 1947, 16-3408.

7-4-2904. Qualifications for office of county coroner. (1) In addition to the qualifications set forth in 7-4-2201, to be eligible for the office of coroner, at the time of election or appointment to office a person must be a high school graduate or holder of an equivalency of completion of secondary education as provided by the superintendent of public instruction under 20-7-131 or of an equivalency issued by another state or jurisdiction.

(2) Each coroner, before entering the duties of his office, must:

(a) take and file with the county clerk the constitutional oath of office; and

(b) certify to the county clerk that:

(i) he has satisfactorily completed the basic coroner course of study provided in 7-4-2905 or that he has completed the equivalent educational requirements approved by the attorney general; or

(ii) he intends to take the basic coroner course at the next offering of the course if the coroner has been appointed or was elected by other than a local government general election and, from the date of appointment or election and assumption of his duties as coroner, no basic coroner course was offered. A coroner forfeits his office for failure to take and satisfactorily complete the next offering of the basic coroner course.

History: En. Sec. 1, Ch. 367, L. 1987.

7-4-2905. Coroner education and continuing education. (1) Coroner education must be conducted by the board of crime control. The board may adopt rules establishing standards and procedures for basic and advanced education. The cost of conducting the education must be borne by the department of justice from money appropriated for the education. The county shall pay the salary, mileage, and per diem of each coroner-elect, coroner, and deputy coroner attending from that county.

(2) (a) The board shall conduct a 40-hour basic coroner course of study after each general election. The course, or an equivalent course approved by the board, must be completed before the first Monday in January following the election. The board may conduct other basic coroner courses at times it considers appropriate.

(b) The board shall annually conduct a 16-hour advanced coroner course. Unless there are exigent circumstances, failure of any coroner or deputy coroner to satisfactorily complete the advanced coroner course, or an equivalent course approved by the board, at least once every 2 years results in forfeiture of office. The board may adopt rules providing a procedure to extend the 2-year period due to exigent circumstances.

History: En. Sec. 4, Ch. 367, L. 1987; amd. Sec. 1, Ch. 118, L. 1993; amd. Sec. 1, Ch. 24, L. 1995.

Compiler's Comments

1995 Amendment: Chapter 24 in (1) inserted second sentence allowing adoption of rules regarding education standards and procedures; and in (2)(b), at beginning of second sentence, inserted "Unless there are exigent circumstances" and inserted third sentence allowing extension of the 2-year period due to exigent circumstances.

7-4-2906 through 7-4-2910 reserved.

7-4-2911. Duties of county coroner. The county coroner shall:

(1) hold inquests as provided in Title 46, chapter 4, parts 1 and 2;

(2) inquire into the cause, manner, and circumstances of all human deaths, as required in 46-4-122, and establish the identity of the deceased person;

(3) provide decent disposal of an unclaimed dead human body and unclaimed parts of bodies believed to be human;

(4) maintain records of inquiries as required by good practice and by law;

(5) as soon as practicable upon identifying a dead human body, provide for notifying the next of kin of the deceased of the fact of death in any death into which he is making an inquiry;

(6) if no law enforcement agency has jurisdiction of the case, preserve evidence involving any human death, pursuant to his authority, including placing under his control, to the extent necessary, any personal and real property that may be related to or involved in the death;

(7) witness and certify deaths that are the result of a judicial order;

(8) inquire into any human death when no physician or surgeon licensed in the state will sign a death certificate;

(9) notify the county attorney and the law enforcement agency having jurisdiction of all deaths requiring inquiry pursuant to 46-4-122; and

(10) in the cases specified in 25-3-205, discharge the duties of sheriff. If acting as sheriff, the coroner is allowed the same salary as sheriff or the same fees as constable for like services.

History: (1)En. Sec. 4490, Pol. C. 1895; re-en. Sec. 3066, Rev. C. 1907; re-en. Sec. 4848, R.C.M. 1921; Cal. Pol. C. Sec. 4285; re-en. Sec. 4848, R.C.M. 1935; amd. Sec. 22, Ch. 530, L. 1977; Sec. 16-3401, R.C.M. 1947; (2)Ap. p. Sec. 4495, Pol. C. 1895; re-en. Sec. 3071, Rev. C. 1907; re-en. Sec. 4852, R.C.M. 1921; Cal. Pol. C. Sec. 4290; re-en. Sec. 4852, R.C.M. 1935; Sec. 16-3406, R.C.M. 1947; Ap. p. Sec. 4640, Pol. C. 1895; re-en. Sec. 3173, Rev. C. 1907; re-en. Sec. 4922, R.C.M. 1921; amd. Sec. 1, Ch. 59, L. 1933; re-en. Sec. 4922, R.C.M. 1935; amd. Sec. 1, Ch. 9, L. 1937; amd. Sec. 1, Ch. 211, L. 1951; amd. Sec. 9, Ch. 439, L. 1975; Sec. 25-236, R.C.M. 1947; R.C.M. 1947, 16-3401, 16-3406, 25-236(part); amd. Sec. 4, Ch. 371, L. 1979; amd. Sec. 20, Ch. 443, L. 1979; amd. Sec. 10, Ch. 660, L. 1991.

Cross-References

Duty of Coroner to report violations of Montana Elder Abuse Prevention Act, 52-3-811.

7-4-2912. Repealed. Sec. 21, Ch. 660, L. 1991.

History: En. Sec. 4496, Pol. C. 1895; re-en. Sec. 3072, Rev. C. 1907; re-en. Sec. 4854, R.C.M. 1921; re-en. Sec. 4854, R.C.M. 1935; R.C.M. 1947, 16-3407; amd. Sec. 21, Ch. 443, L. 1979.

7-4-2913. Payment of costs of inquest. Whenever an inquest is held because of the death of an individual confined in the state prison, the county clerk of the county where the inquest is held shall make out a statement of all the costs incurred by the county in the inquest, properly certified by the coroner of the county. This statement must be sent to the department of corrections for approval, and after approval, the department shall pay the costs out of the money appropriated for the support of the state prison to the county treasurer of the county where the inquest was held.

History: En. Sec. 2, Ch. 122, L. 1909; re-en. Sec. 4857, R.C.M. 1921; re-en. Sec. 4857, R.C.M. 1935; amd. Sec. 86, Ch. 199, L. 1965; R.C.M. 1947, 16-3410; amd. Sec. 22, Ch. 443, L. 1979; amd. Sec. 1, Ch. 262, L. 1991; amd. Sec. 27, Ch. 546, L. 1995.

Compiler's Comments

1995 Amendment: Chapter 546 in second sentence substituted "department of corrections" for "department of corrections and human services"; and made minor changes in style. Amendment effective July 1, 1995.

7-4-2914. Statement required before allowing accounts of coroner. Before allowing the accounts of the coroner, the board of county commissioners must require him to file with the clerk of the board a statement, in writing and verified by his affidavit, showing:

(1) the amount of money or other property belonging to the estate of the deceased person which has come into his possession since his last statement;

(2) the disposition made of such property.

History: En. Sec. 4493, Pol. C. 1895; re-en. Sec. 3069, Rev. C. 1907; re-en. Sec. 4851, R.C.M. 1921; Cal. Pol. C. Sec. 4288; re-en. Sec. 4851, R.C.M. 1935; R.C.M. 1947, 16-3404.

7-4-2915. Custody and disposition of bodies held pending investigation. (1) In the course of an inquiry authorized under the provisions of 46-4-122, the coroner may take custody of a dead human body and cause it to be removed from the site of death to a facility designated by the coroner.

(2) A dead human body in the custody of a county coroner must be held until the coroner, after consultation with appropriate law enforcement officials and the county attorney, establishes that it is not necessary to hold the body

to determine the reasonable and true cause of death or that the body is no longer necessary to assist any local investigations.

(3) If the identity of a dead human body is unknown or if those entitled to custody of a body do not claim it, the coroner shall take custody of the body even if the circumstances of the death do not otherwise require an inquiry by the coroner.

(4) A dead human body in the custody of the coroner may be released by him to the custody of a person who is entitled to custody or to a funeral home.

(5) The coroner shall release to a funeral home a dead human body that is not designated to be released to a specific funeral home by the deceased prior to death, by the deceased's next of kin, or by a friend of the deceased who will take financial responsibility for the disposition of the body. The coroner shall rotate the release of bodies to funeral homes in a manner that is fair and equitable. The coroner may not release a body to a funeral home if the funeral home has requested in writing by December 1 of the preceding year that it does not wish to participate in the release of bodies under this section.

History: En. Sec. 1, Ch. 378, L. 1979; amd. Sec. 11, Ch. 660, L. 1991.

7-4-2916. Repealed. Sec. 21, Ch. 660, L. 1991.

History: En. Sec. 2, Ch. 378, L. 1979.

7-4-2917. Disposition of property of deceased — suicide note. (1) Any property of a decedent or any suicide note composed or purportedly composed by a decedent in the custody of the county coroner shall be held until such time as the county attorney establishes that it is not necessary to hold such property or note to determine the true cause of death, to assist any investigating agency, or to be used as evidence in any related criminal court action.

(2) For the purposes of this section, "investigating agency" means any county attorney, the state medical examiner, and any law enforcement agency of this state and any political subdivision of this state having jurisdiction of the death.

(3) When such property or note is no longer needed for evidentiary purposes, it shall be given upon written request to the personal representative of the decedent appointed under Title 72 or, if no personal representative is appointed, to the decedent's family or whoever in the discretion of the county attorney should receive the property or the note.

History: En. Sec. 1, Ch. 408, L. 1983.

Cross-References

Return of crime victim's property, 46-24-206.

7-4-2918 through 7-4-2920 reserved.

7-4-2921. Repealed. Sec. 5, Ch. 371, L. 1979.

History: En. Sec. 4640, Pol. C. 1895; re-en. Sec. 3173, Rev. C. 1907; re-en. Sec. 4922, R.C.M. 1921; amd. Sec. 1, Ch. 59, L. 1933; re-en. Sec. 4922, R.C.M. 1935; amd. Sec. 1, Ch. 9, L. 1937; amd. Sec. 1, Ch. 211, L. 1951; amd. Sec. 9, Ch. 439, L. 1975; R.C.M. 1947, 25-236(part).

7-4-2922. Repealed. Sec. 5, Ch. 371, L. 1979.

History: En. Sec. 4640, Pol. C. 1895; re-en. Sec. 3173, Rev. C. 1907; re-en. Sec. 4922, R.C.M. 1921; amd. Sec. 1, Ch. 59, L. 1933; re-en. Sec. 4922, R.C.M. 1935; amd. Sec. 1, Ch.

9, L. 1937; amd. Sec. 1, Ch. 211, L. 1951; amd. Sec. 9, Ch. 439, L. 1975; R.C.M. 1947, 25-236(part).

7-4-2923. Computation of mileage for reimbursement. When any coroner serves more than one process in the same cause, not requiring more than one journey from his office, he shall receive mileage only for the more distant service, and no mileage in any case must be allowed for less than 1 mile actually traveled.

History: En. Sec. 4619, Pol. C. 1895; re-en. Sec. 3152, Rev. C. 1907; re-en. Sec. 4900, R.C.M. 1921; re-en. Sec. 4900, R.C.M. 1935; R.C.M. 1947, 25-216(part).

Cross-References

Mileage and expenses of Sheriff, 7-32-2143.

Part 30

Offices of Sheriff, County Treasurer, County Auditor, Public Administrator, County Superintendent of Schools, and Clerk of District Court

7-4-3001. Office of sheriff. The duties and functions of the sheriff's department are provided for in part 21, chapter 32.

History: En. by Code Commissioner, 1979.

7-4-3002. Office of county treasurer. The duties and functions of the treasurer's office are provided for in part 21, chapter 6.

History: En. by Code Commissioner, 1979.

7-4-3003. Office of county auditor. The duties and functions of the auditor's office are provided for in part 24, chapter 6.

History: En. by Code Commissioner, 1979.

7-4-3004. Office of public administrator. The powers and duties of the public administrator are defined by Title 72, chapter 15, and 72-5-415(2).

History: New section recommended by Code Commissioner, 1921; re-en. Sec. 4858, R.C.M. 1935; R.C.M. 1947, 16-3501; amd. Sec. 3, Ch. 362, L. 1985.

7-4-3005. Office of county superintendent of schools. The duties and functions of the office of county superintendent of schools are provided for in Title 20.

History: En. by Code Commissioner, 1979.

7-4-3006. Limitation on number of deputy district court clerks. The whole number of deputies allowed the clerk of the district court may not exceed one chief deputy and up to:

(1) six deputies in counties of the first or second class;

(2) four deputies in counties of the third or fourth class having more than one district judge;

(3) two deputies in counties of the third or fourth class having one district judge;

(4) one deputy in counties of the fifth, sixth, or seventh class.

History: En. Sec. 1, Ch. 75, L. 1905; re-en. Sec. 3119, Rev. C. 1907; amd. Sec. 2, Ch. 93, L. 1909; amd. Sec. 1, Ch. 119, L. 1909; re-en. Sec. 4875, R.C.M. 1921; re-en. Sec. 4875, R.C.M. 1935; amd. Sec. 1, Ch. 69, L. 1953; R.C.M. 1947, 16-3701(part); amd. Sec. 23, Ch. 443, L. 1979.

Cross-References

Clerk of the District Court — powers and duties, Title 3, ch. 5, part 5.

Authorization to exceed limitation on number of deputies, 7-4-2402.

Veterans' public employment preference, Title 39, ch. 29.

Handicapped persons' public employment preference, Title 39, ch. 30.

7-4-3007. Qualifications for office of county assessor — forfeiture of office. (1) In addition to the qualifications set forth in 7-4-2201, each assessor, before entering the duties of office, shall:

(a) take and file with the county clerk the constitutional oath of office; and

(b) certify to the county clerk that:

(i) the assessor has satisfactorily completed the assessor certification training as provided in 15-7-106(4); or

(ii) the assessor intends to take the assessor certification training at the next offering.

(2) An assessor forfeits office for failure to take and satisfactorily complete the assessor certification training within 36 months after taking office by election or appointment or for failure to satisfactorily complete continuing education when conducted by the department of revenue, unless the board of county commissioners finds that:

(a) the assessor is excused for reasons beyond the assessor's control, including illness, a death in the family, or other good cause; or

(b) there is no other qualified person available for appointment as assessor.

(3) Subsections (1)(b) and (2) do not apply to county officers who are county assessors because their county office has been consolidated with the office of county assessor and who are not contractually required to perform property assessment duties for the department.

History: En. Sec. 1, Ch. 623, L. 1989; amd. Sec. 167, Ch. 27, Sp. L. November 1993.

Parts 31 through 40 reserved

Part 41

Municipal Officers in General

7-4-4101. Officers of city of first class. (1) The officers of a city of the first class consist of:

(a) one mayor;

(b) two aldermen from each ward;

(c) one city judge.

(2) The officers listed in subsection (1) must be elected by the qualified electors of the city, as hereinafter provided.

(3) There may also be appointed by the mayor, with the advice and consent of the council:

(a) one city attorney;

(b) one city clerk;

(c) one city treasurer or finance officer or one city clerk-treasurer;

(d) one chief of police;

(e) one assessor;

(f) one street commissioner;

(g) one city jailer;
(h) one city surveyor; and
(i) any other officers necessary to carry out the provisions of this title.

(4) The city council may by ordinance prescribe the duties of all city officers and fix their compensation.

History: **En. Sec. 4740, Pol. C. 1895; re-en. Sec. 3216, Rev. C. 1907; re-en. Sec. 4995, R.C.M. 1921; re-en. Sec. 4995, R.C.M. 1935; R.C.M. 1947, 11-701; amd. Sec. 1, Ch. 447, L. 1979.**

Cross-References

Classification of municipalities, 7-1-4111.

7-4-4102. Officers of city of second or third class. (1) The officers of a city of the second or third class consist of:
(a) one mayor;
(b) two aldermen from each ward;
(c) one city judge.

(2) The officers listed in subsection (1), except the city judge for a city of the third class, must be elected by the qualified electors of the city as hereinafter provided.

(3) The governing body of a city of the third class may by ordinance determine whether the office of city judge shall be filled by appointment by the governing body or by election or may appoint a justice of the peace or the city judge of another city as judge of the city court as provided in 3-11-205.

(4) There may also be appointed by the mayor, with the advice and consent of the council:
(a) one city attorney;
(b) one city clerk, who is ex officio city assessor;
(c) one city treasurer or one city clerk-treasurer;
(d) one chief of police; and
(e) any other officers necessary to carry out the provisions of this title.

(5) The city council may prescribe the duties of all city officers and fix their compensation.

History: **En. Sec. 4741, Pol. C. 1895; re-en. Sec. 3217, Rev. C. 1907; re-en. Sec. 4996, R.C.M. 1921; re-en. Sec. 4996, R.C.M. 1935; amd. Sec. 1, Ch. 24, L. 1975; R.C.M. 1947, 11-702(part); amd. Sec. 2, Ch. 447, L. 1979; amd. Sec. 1, Ch. 506, L. 1979; amd. Sec. 7, Ch. 543, L. 1987; amd. Sec. 3, Ch. 300, L. 1989.**

Cross-References

Classification of municipalities, 7-1-4111.

7-4-4103. Officers of towns. (1) The officers of a town consist of:
(a) one mayor;
(b) two aldermen from each ward; and
(c) one city judge.

(2) The officers listed in subsection (1), except for the city judge, must be elected by the qualified electors of the town, as hereinafter provided.

(3) The governing body of the town may by ordinance determine that the office of city judge must be filled either by election or appointment or may appoint a justice of the peace or the city judge of another city to be judge of the city court as provided in 3-11-205.

(4) There may be appointed by the mayor, with the advice and consent of the council:

(a) one clerk, who may be ex officio assessor and tax collector and a member of the council;

(b) one marshal, who may be ex officio street commissioner; and

(c) any other officers necessary to carry out the provisions of this title.

(5) The town council may prescribe the duties of all town officers and fix their compensation, subject to the limitations contained in this title.

History: **En. Sec. 4742, Pol. C. 1895; re-en. Sec. 3218, Rev. C. 1907; re-en. Sec. 4997, R.C.M. 1921; re-en. Sec. 4997, R.C.M. 1935; amd. Sec. 1, Ch. 146, L. 1974; R.C.M. 1947, 11-703; amd. Sec. 1, Ch. 269, L. 1981; amd. Sec. 8, Ch. 543, L. 1987; amd. Sec. 4, Ch. 300, L. 1989.**

Cross-References

Classification of municipalities, 7-1-4111.

7-4-4104. General qualifications for municipal office. No person is eligible to any municipal office, elective or appointive:

(1) who is not a citizen of the United States; and

(2) who has not met the qualifications prescribed by law or by ordinance adopted by the governing body of a city or town.

History: **En. Sec. 365, 5th Div. Comp. Stat. 1887; amd. Sec. 4752, Pol. C. 1895; re-en. Sec. 3228, Rev. C. 1907; re-en. Sec. 5007, R.C.M. 1921; re-en. Sec. 5007, R.C.M. 1935; amd. Sec. 2, Ch. 76, L. 1961; R.C.M. 1947, 11-713; amd. Sec. 2, Ch. 506, L. 1979; amd. Sec. 2, Ch. 269, L. 1981.**

7-4-4105. Authority to abolish appointive municipal offices. The city or town council may abolish, by a majority vote of the council, any office, except that of city judge, the appointment to which is made by the mayor with the advice and consent of the council and may discharge any officer so appointed.

History: **En. Sec. 4744, Pol. C. 1895; re-en. Sec. 3220, Rev. C. 1907; re-en. Sec. 4999, R.C.M. 1921; re-en. Sec. 4999, R.C.M. 1935; R.C.M. 1947, 11-705; amd. Sec. 24, Ch. 443, L. 1979; amd. Sec. 3, Ch. 506, L. 1979.**

7-4-4106. Authority to consolidate municipal offices. The city or town council may by ordinance consolidate any of the offices, except that of city judge, the appointment to which is made by the mayor with the advice and consent of the council and may require any of the elected officers to perform any of the duties of an appointed officer whose office has been abolished.

History: **En. Sec. 4745, Pol. C. 1895; re-en. Sec. 3221, Rev. C. 1907; re-en. Sec. 5000, R.C.M. 1921; re-en. Sec. 5000, R.C.M. 1935; R.C.M. 1947, 11-706; amd. Sec. 4, Ch. 506, L. 1979.**

7-4-4107. Commencement of term of office. (1) The terms of all officers elected at a municipal election are to commence on the first Monday in January after such election.

(2) Officers appointed by the mayor with the advice and consent of the council enter upon their duties within 10 days after receiving notice of their appointment.

History: **En. Secs. 4751, 4759, Pol. C. 1895; re-en. Secs. 3227, 3235, Rev. C. 1907; re-en. Secs. 5006, 5014, R.C.M. 1921; re-en. Secs. 5006, 5014, R.C.M. 1935; R.C.M. 1947, 11-712, 11-720; amd. Sec. 27, Ch. 575, L. 1981.**

7-4-4108. Repealed. Sec. 2, Ch. 486, L. 1993.

History: **Ap. p. Sec. 4758, Pol. C. 1895; re-en. Sec. 3234, Rev. C. 1907; re-en. Sec. 5013, R.C.M. 1921; re-en. Sec. 5013, R.C.M. 1935; amd. Sec. 1, Ch. 7, L. 1973; Sec. 11-719, R.C.M. 1947; Ap. p. Sec. 4772, Pol. C. 1895; re-en. Sec. 3248, Rev. C. 1907; re-en. Sec. 5027,**

R.C.M. 1921; re-en. Sec. 5027, R.C.M. 1935; Sec. 11-733, R.C.M. 1947; R.C.M. 1947, 11-719(part), 11-733.

7-4-4109. Official bond. Each officer of a city or town who is required to give bond shall file the same, duly approved, within 10 days after receiving notice of his election or appointment or, if no notice be received, then on or before the date fixed for the assumption by him of the duties of the office to which he may have been elected or appointed.

History: En. Sec. 4758, Pol. C. 1895; re-en. Sec. 3234, Rev. C. 1907; re-en. Sec. 5013, R.C.M. 1921; re-en. Sec. 5013, R.C.M. 1935; amd. Sec. 1, Ch. 7, L. 1973; R.C.M. 1947, 11-719(part).

Cross-References

Official bonds, Title 2, ch. 9, parts 5 through 8.

7-4-4110. Duties of officers not otherwise provided for. (1) The city or town council has power to prescribe the duties of all officers of the city or town, subject to the limitations mentioned in this code.

(2) The duties of the street commissioner, chief of the fire department, city surveyor, and other city officers not provided in this code may be prescribed by ordinance.

History: (1)En. Subd. 47, Sec. 5039, R.C.M. 1921; amd. Sec. 1, Ch. 115, L. 1925; amd. Sec. 1, Ch. 20, L. 1927; re-en. Sec. 5039.46, R.C.M. 1935; Sec. 11-949, R.C.M. 1947; (2)En. Sec. 4789, Pol. C. 1895; re-en. Sec. 3258, Rev. C. 1907; re-en. Sec. 5028, R.C.M. 1921; re-en. Sec. 5028, R.C.M. 1935; Sec. 11-734, R.C.M. 1947; R.C.M. 1947, 11-734(part), 11-949(part).

7-4-4111. Determination of vacancy in municipal office. An office becomes vacant on the happening of any of the following events before the expiration of the term of the incumbent:

(1) the death of the incumbent;

(2) a determination pursuant to Title 53, chapter 21, part 1, that he is mentally ill;

(3) his resignation;

(4) his removal from office;

(5) his absence from the city or town continuously for 10 days without the consent of the council;

(6) his open neglect or refusal to discharge his duties;

(7) his ceasing to be a resident of the city or town or, in the case of an alderman, his ceasing to be a resident of his ward;

(8) his ceasing to discharge the duty of his office for a period of 3 consecutive months, except when prevented by illness or when absent from the city or town by permission of the governing body;

(9) his conviction of a felony or of any offense involving moral turpitude or a violation of his official duties;

(10) his refusal or neglect to file his official bond within the time prescribed;

(11) the decision of a competent tribunal declaring void his election or appointment.

History: En. Sec. 4758, Pol. C. 1895; re-en. Sec. 3234, Rev. C. 1907; re-en. Sec. 5013, R.C.M. 1921; re-en. Sec. 5013, R.C.M. 1935; amd. Sec. 1, Ch. 7, L. 1973; R.C.M. 1947, 11-719(part); amd. Sec. 1, Ch. 233, L. 1981.

Cross-References

Montana Recall Act, Title 2, ch. 16, part 6.

7-4-4112. Filling of vacancy. (1) When any vacancy occurs in any elective office, this position shall be considered open and subject to nomination and election at the next general municipal election in the same manner as the election of any other person holding the same office, except the term of office shall be limited to the unexpired term of the person who originally created the vacancy. Pending such election and qualification the council shall, by a majority vote of the members, appoint a person within 30 days of the vacancy to hold the office until his successor is elected and qualified.

(2) If all council positions become vacant at one time, the board of county commissioners shall appoint persons within 5 days to hold office as aldermen. The appointed aldermen shall then appoint persons to any other vacant elective offices.

(3) A vacancy in the office of alderman must be filled from the ward in which the vacancy exists.

History: En. Sec. 1, Ch. 72, L. 1903; re-en. Sec. 3236, Rev. C. 1907; re-en. Sec. 5015, R.C.M. 1921; amd. Sec. 1, Ch. 26, L. 1974; R.C.M. 1947, 11-721(part); amd. Sec. 1, Ch. 457, L. 1981; amd. Sec. 1, Ch. 286, L. 1987.

Cross-References

Elections, Title 13.

7-4-4113. Removal of appointed officer. The council, upon written charges to be entered upon their journal, after notice to the party, and after trial by the council, may remove any nonelected officer by vote of two-thirds of all the members-elect.

History: En. Sec. 1, Ch. 72, L. 1903; re-en. Sec. 3236, Rev. C. 1907; re-en. Sec. 5015, R.C.M. 1921; amd. Sec. 1, Ch. 26, L. 1974; R.C.M. 1947, 11-721(part).

7-4-4114. Municipal executive officers. (1) The executive officers of a city or town are the mayor, the marshal (if there is one), and such officers as the council may provide for assessment; collecting, auditing, safekeeping, and disbursing the revenue; and keeping the records and journals of the city or town.

(2) The mayor is the chief executive officer of the city or town.

History: (1)En. Sec. 4780, Pol. C. 1895; re-en. Sec. 3249, Rev. C. 1907; re-en. Sec. 5029, R.C.M. 1921; Cal. Pol. C. Sec. 4385; re-en. Sec. 5029, R.C.M. 1935; Sec. 11-801, R.C.M. 1947; (2)En. Sec. 367, 5th Div. Comp. Stat. 1887; amd. Sec. 13, p. 126, L. 1893; amd. Sec. 4781, Pol. C. 1895; re-en. Sec. 3250, Rev. C. 1907; re-en. Sec. 5030, R.C.M. 1921; Cal. Pol. C. Sec. 4386; re-en. Sec. 5030, R.C.M. 1935; amd. Sec. 1, Ch. 535, L. 1975; Sec. 11-802, R.C.M. 1947; R.C.M. 1947, 11-801, 11-802(part); amd. Sec. 25, Ch. 443, L. 1979.

Part 42

Compensation of Municipal Officers and Employees

Part Cross-References

Veterans' public employment preference, Title 39, ch. 29.

Handicapped persons' public employment preference, Title 39, ch. 30.

7-4-4201. Salary of officers. The council shall determine by ordinance or resolution the salaries and compensation of elected and appointed city officers and all city employees.

History: Ap.p. Secs. 4763, 4789, Pol. C. 1895; re-en. Secs. 3239, 3258, Rev. C. 1907; re-en. Secs. 5018, 5028, R.C.M. 1921; re-en. Secs. 5018, 5028, R.C.M. 1935; Secs. 11-724, 11-734, R.C.M. 1947; Ap.p. Sec. 4764, Pol. C. 1895; re-en. Sec. 3240, Rev. C. 1907; amd. Sec. 1, Ch. 111, L. 1913; re-en. Sec. 5019, R.C.M. 1921; re-en. Sec. 5019, R.C.M. 1935; amd.

Sec. 1, Ch. 50, L. 1943; amd. Sec. 1, Ch. 188, L. 1949; amd. Sec. 1, Ch. 115, L. 1951; amd. Sec. 1, Ch. 76, L. 1953; amd. Sec. 1, Ch. 170, L. 1955; amd. Sec. 1, Ch. 179, L. 1961; amd. Sec. 1, Ch. 142, L. 1963; amd. Sec. 1, Ch. 158, L. 1965; amd. Sec. 1, Ch. 224, L. 1967; amd. Sec. 1, Ch. 297, L. 1969; Sec. 11-725, R.C.M. 1947; Ap.p. Sec. 4767, Pol. C. 1895; re-en. Sec. 3243, Rev. C. 1907; re-en. Sec. 5022, R.C.M. 1921; re-en. Sec. 5022, R.C.M. 1935; amd. Sec. 1, Ch. 69, L. 1939; amd. Sec. 1, Ch. 46, L. 1947; amd. Sec. 3, Ch. 76, L. 1953; amd. Sec. 2, Ch. 170, L. 1955; amd. Sec. 3, Ch. 179, L. 1961; amd. Sec. 2, Ch. 142, L. 1963; amd. Sec. 3, Ch. 158, L. 1965; amd. Sec. 1, Ch. 189, L. 1967; Sec. 11-728, R.C.M. 1947; Ap.p. Sec. 4768, Pol. C. 1895; re-en. Sec. 3244, Rev. C. 1907; re-en. Sec. 5023, R.C.M. 1921; re-en. Sec. 5023, R.C.M. 1935; amd. Sec. 1, Ch. 25, L. 1943; amd. Sec. 2, Ch. 188, L. 1949; amd. Sec. 2, Ch. 115, L. 1951; amd. Sec. 4, Ch. 76, L. 1953; amd. Sec. 3, Ch. 170, L. 1955; amd. Sec. 4, Ch. 179, L. 1961; amd. Sec. 4, Ch. 158, L. 1965; amd. Sec. 1, Ch. 155, L. 1967; Sec. 11-729, R.C.M. 1947; Ap.p. Sec. 4770, Pol. C. 1895; re-en. Sec. 3246, Rev. C. 1907; amd. Sec. 1, Ch. 14, L. 1917; re-en. Sec. 5025, R.C.M. 1921; re-en. Sec. 5025, R.C.M. 1935; amd. Sec. 1, Ch. 124, L. 1945; amd. Sec. 3, Ch. 188, L. 1949; amd. Sec. 3, Ch. 115, L. 1951; amd. Sec. 5, Ch. 76, L. 1953; amd. Sec. 4, Ch. 170, L. 1955; amd. Sec. 5, Ch. 179, L. 1961; amd. Sec. 5, Ch. 158, L. 1965; amd. Sec. 1, Ch. 156, L. 1967; amd. Sec. 2, Ch. 146, L. 1974; Sec. 11-731, R.C.M. 1947; R.C.M. 1947, 11-724, 11-725(part), 11-728, 11-729, 11-731, 11-734(part); amd. Sec. 1, Ch. 221, L. 1979; amd. Sec. 1, Ch. 428, L. 1979; amd. Sec. 26, Ch. 443, L. 1979.

7-4-4202. Minimum salary of chief of police. (1) From and after July 1, 1969, the salary of the chief of police in cities of the first class shall not be less than $650 per month for the first year of service and thereafter at least $650 per month plus 1% of said minimum base monthly salary for each additional year of service up to and including the 20th year of such additional service.

(2) From and after July 1, 1957, the annual salary and compensation of the chief of police in cities of the second class shall be not less than $425 per month for the first year of service and thereafter at least $425 per month plus 1% of said minimum base monthly salary for each additional year of service up to and including the 20th year of such additional service.

(3) From and after July 1, 1957, the salary and compensation of the chief of police in cities of the third class shall be not less than $325 per month for the first year of service and thereafter at least $325 per month plus 1% of said minimum base monthly salary for each additional year of service up to and including the 20th year of such additional service.

(4) Subject to such minimum, the salary of the chief of police may be increased from time to time by the mayor, subject to the consent and approval of the council.

History: (1), (4)En. Sec. 13, Ch. 136, L. 1907; Sec. 3316, Rev. C. 1907; re-en. Sec. 5107, R.C.M. 1921; re-en. Sec. 5107, R.C.M. 1935; amd. Sec. 1, Ch. 9, L. 1951; amd. Sec. 1, Ch. 29, L. 1957; amd. Sec. 1, Ch. 356, L. 1969; Sec. 11-1815, R.C.M. 1947; (2), (3)En. Sec. 4769, Pol. C. 1895; re-en. Sec. 3245, Rev. C. 1907; amd. Sec. 1, Ch. 55, L. 1911; re-en. Sec. 5024, R.C.M. 1921; re-en. Sec. 5024, R.C.M. 1935; amd. Sec. 1, Ch. 51, L. 1943; amd. Sec. 1, Ch. 234, L. 1947; amd. Sec. 1, Ch. 10, L. 1951; amd. Sec. 1, Ch. 30, L. 1957; Sec. 11-730, R.C.M. 1947; R.C.M. 1947, 11-730, 11-1815.

Cross-References

Minimum wage of police in first- and second-class cities, 7-32-4116.

7-4-4203 through 7-4-4210 reserved.

7-4-4211. Designation of person to receive decedent's warrants or paychecks — reissuance. Any person employed by a municipality may file with his appointing power a designation of a person who, notwithstanding any other provision of law, is entitled, on the death of the employee, to receive all warrants or paychecks that would have been payable to the decedent had he survived. The employee may change the designation from time to time. A person so designated shall claim such warrants or paychecks from the city treasurer or town clerk, whichever is applicable, and on sufficient proof of identity, the city treasurer or town clerk shall reissue the warrant or paycheck in the name of the designated person and deliver the warrant or paycheck to the designated person.

History: En. Sec. 2, Ch. 113, L. 1983.

Cross-References

State employees designation, 2-18-412.

County employees designation, 7-4-2521.

Part 43
Office of Mayor

7-4-4301. Qualifications for mayor. (1) No person is eligible for the office of mayor unless he:

(a) is at least 21 years old;

(b) has been a resident of the state for at least 3 years; and

(c) has been a resident for at least 2 years preceding the election to office of the city or town or an area which has been annexed by the city or town.

(2) The office of mayor of a city or town is considered vacant if the individual elected as mayor ceases to be a resident of the city or town.

History: En. Sec. 8, p. 65, Ex. L. 1887; amd. Sec. 4749, Pol. C. 1895; re-en. Sec. 3225, Rev. C. 1907; re-en. Sec. 5004, R.C.M. 1921; re-en. Sec. 5004, R.C.M. 1935; amd. Sec. 1, Ch. 76, L. 1961; amd. Sec. 1, Ch. 177, L. 1974; R.C.M. 1947, 11-710; amd. Sec. 2, Ch. 420, L. 1979; amd. Sec. 27, Ch. 443, L. 1979.

Cross-References

Filling vacancy in office, 7-4-4112.

7-4-4302. Term of office. The mayor shall hold office for a term of 4 years and until the qualification of his successor.

History: En. Sec. 4, p. 122, L. 1893; amd. Sec. 4748, Pol. C. 1895; re-en. Sec. 3324, Rev. C. 1907; re-en. Sec. 5003, R.C.M. 1921; amd. Sec. 1, Ch. 60, L. 1935; re-en. Sec. 5003, R.C.M. 1935; amd. Sec. 1, Ch. 193, L. 1971; amd. Sec. 1, Ch. 343, L. 1971; R.C.M. 1947, 11-709(part).

7-4-4303. Powers of mayor related to municipal officers, personnel, and citizens. The mayor has power to:

(1) nominate and, with the consent of the council, appoint all nonelective officers of the city or town provided for by the council, except as provided in this title;

(2) suspend and, with the consent of the council, remove any nonelective officer, stating in the suspension or removal the cause thereof;

(3) supervise the discharge of official duty by all subordinate officers;

(4) require of any of the officers of a city or town an exhibit of such officer's books and papers;

(5) call on every citizen of the city or town over the age of 18 years to aid in the enforcement of the laws and ordinances in case of riot;

(6) call out the militia to aid the mayor in suppressing riots or other disorderly conduct, preventing and extinguishing fires, securing the peace and safety of the city, or carrying into effect any law or ordinance.

History: En. Sec. 367, 5th Div. Comp. Stat. 1887; amd. Sec. 13, p. 126, L. 1893; amd. Sec. 4781, Pol. C. 1895; re-en. Sec. 3250, Rev. C. 1907; re-en. Sec. 5030, R.C.M. 1921; Cal. Pol. C. Sec. 4386; re-en. Sec. 5030, R.C.M. 1935; amd. Sec. 1, Ch. 535, L. 1975; R.C.M. 1947, 11-802(part).

Cross-References

Appointment of police officers, 7-32-4111 through 7-32-4113.

Appointment of firefighters, 7-33-4106 through 7-33-4108.

7-4-4304. Effect of failure to obey call from mayor for assistance. Any person who does not obey a call pursuant to 7-4-4303(5) or (6) forfeits to the city or town a fine not exceeding $25.

History: En. Sec. 367, 5th Div. Comp. Stat. 1887; amd. Sec. 13, p. 126, L. 1893; amd. Sec. 4781, Pol. C. 1895; re-en. Sec. 3250, Rev. C. 1907; re-en. Sec. 5030, R.C.M. 1921; Cal. Pol. C. Sec. 4386; re-en. Sec. 5030, R.C.M. 1935; amd. Sec. 1, Ch. 535, L. 1975; R.C.M. 1947, 11-802(part).

7-4-4305. Power to grant pardons. The mayor has power to grant pardons and remit fines and forfeitures for offenses against city or town ordinances when in the mayor's judgment public justice would be thereby subserved. The mayor must report all pardons granted, with the reasons therefor, to the next council.

History: En. Sec. 367, 5th Div. Comp. Stat. 1887; amd. Sec. 13, p. 126, L. 1893; amd. Sec. 4781, Pol. C. 1895; re-en. Sec. 3250, Rev. C. 1907; re-en. Sec. 5030, R.C.M. 1921; Cal. Pol. C. Sec. 4386; re-en. Sec. 5030, R.C.M. 1935; amd. Sec. 1, Ch. 535, L. 1975; R.C.M. 1947, 11-802(15).

7-4-4306. Extraterritorial powers. The mayor has power to exercise such power as may be vested in the mayor by ordinance of the city or town, in and over all places within 5 miles of the boundaries of the city or town for the purpose of enforcing the health and quarantine ordinances and regulations thereof.

History: En. Sec. 367, 5th Div. Comp. Stat. 1887; amd. Sec. 13, p. 126, L. 1893; amd. Sec. 4781, Pol. C. 1895; re-en. Sec. 3250, Rev. C. 1907; re-en. Sec. 5030, R.C.M. 1921; Cal. Pol. C. Sec. 4386; re-en. Sec. 5030, R.C.M. 1935; amd. Sec. 1, Ch. 535, L. 1975; R.C.M. 1947, 11-802(17).

Part 44

Office of Alderman

7-4-4401. Qualifications for alderman. No person is eligible for the office of alderman unless he is a resident for at least 60 days preceding the election to office of the ward electing him or of an area which has been annexed by the city or town and placed in the ward.

History: En. Sec. 366, 5th Div. Comp. Stat. 1887; amd. Sec. 4753, Pol. C. 1895; re-en. Sec. 3229, Rev. C. 1907; re-en. Sec. 5008, R.C.M. 1921; re-en. Sec. 5008, R.C.M. 1935; amd. Sec. 3, Ch. 76, L. 1961; amd. Sec. 1, Ch. 144, L. 1967; R.C.M. 1947, 11-714; amd. Sec. 3, Ch. 420, L. 1979; amd. Sec. 28, Ch. 443, L. 1979.

7-4-4402. Term of office. (1) Except as provided in subsection (2), an alderman shall hold office for a term of 4 years and until the qualification of his successor.

(2) At the first annual election held after the organization of a city or town under this title, the electors of the city or town must elect two aldermen from each ward, who must, at the first meeting of the council, decide by lot their terms of office, with one from each ward to hold for a term of 4 years and one,

for a term of 2 years and until the qualification of their successors. In the succeeding election and thereafter, one alderman from each ward will be elected for a 4-year term.

History: **Ap. p. Sec. 4, p. 122, L. 1893; amd. Sec. 4748, Pol. C. 1895; re-en. Sec. 3224, Rev. C. 1907; re-en. Sec. 5003, R.C.M. 1921; amd. Sec. 1, Ch. 60, L. 1935; re-en. Sec. 5003, R.C.M. 1935; amd. Sec. 1, Ch. 193, L. 1971; amd. Sec. 1, Ch. 343, L. 1971; Sec. 11-709, R.C.M. 1947; Ap. p. Sec. 4750, Pol. C. 1895; re-en. Sec. 3226, Rev. C. 1907; re-en. Sec. 5005, R.C.M. 1921; re-en. Sec. 5005, R.C.M. 1935; Sec. 11-711, R.C.M. 1947; R.C.M. 1947, 11-709(part), 11-711; amd. Sec. 29, Ch. 443, L. 1979.**

7-4-4403. Officers of city or town council. The council may elect a president, who, in the absence of the mayor, is the presiding officer and may perform the duties of mayor. In the absence of the president, the council may appoint one of its number to act in his place.

History: **En. Sec. 4783, Pol. C. 1895; re-en. Sec. 3252, Rev. C. 1907; re-en. Sec. 5032, R.C.M. 1921; re-en. Sec. 5032, R.C.M. 1935; R.C.M. 1947, 11-804.**

Part 45
Office of Municipal Clerk

7-4-4501. Duties of city clerk related to administration. It is the duty of the clerk to:

(1) attend all meetings of the council and record and sign the proceedings thereof and all ordinances, bylaws, resolutions, and contracts passed, adopted, or entered into;

(2) enter in a book all ordinances, resolutions, and bylaws passed and adopted by the council;

(3) countersign and cause to be published or posted, as provided by law, all ordinances, bylaws, or resolutions passed and adopted by the council;

(4) sign, number, and keep a record of all licenses, commissions, or permits granted or authorized by the council;

(5) take and administer oaths, but must not charge or receive any fees therefor;

(6) perform such other and further duties as the council may prescribe.

History: **En. Sec. 4784, Pol. C. 1895; re-en. Sec. 3253, Rev. C. 1907; re-en. Sec. 5033, R.C.M. 1921; Cal. Pol. C. Sec. 4393; re-en. Sec. 5033, R.C.M. 1935; R.C.M. 1947, 11-805(part).**

7-4-4502. Duties of city clerk related to city records and papers. It is the duty of the clerk to:

(1) file and keep all records, books, papers, or property belonging to the city or town and deliver the same to his successor when qualified;

(2) make and certify copies of all records, books, and papers in his possession on the payment of like fees as are allowed county clerks, which fees must be paid into the city treasury;

(3) make and keep a complete index of the journal, ordinance book, finance book, and all other books and papers on file in his office.

History: **En. Sec. 4784, Pol. C. 1895; re-en. Sec. 3253, Rev. C. 1907; re-en. Sec. 5033, R.C.M. 1921; Cal. Pol. C. Sec. 4393; re-en. Sec. 5033, R.C.M. 1935; R.C.M. 1947, 11-805(part).**

Cross-References

Public documents open to public inspection, Art. II, sec. 9, Mont. Const.; 2-6-102.

7-4-4503. City ordinance book. The book required by 7-4-4501(2) is called "The Ordinance Book".

History: En. Sec. 4784, Pol. C. 1895; re-en. Sec. 3253, Rev. C. 1907; re-en. Sec. 5033, R.C.M. 1921; Cal. Pol. C. Sec. 4393; re-en. Sec. 5033, R.C.M. 1935; R.C.M. 1947, 11-805(part).

7-4-4504 through 7-4-4510 reserved.

7-4-4511. Duties of town clerk related to administration. It shall be the duty of the town clerk to:

(1) attend all meetings of the council and record and sign the proceedings thereof and all ordinances, bylaws, resolutions, and contracts passed, adopted, or entered into;

(2) enter in a book all ordinances, resolutions, and bylaws passed and adopted by the council;

(3) countersign and cause to be published or posted, as provided by law, all ordinances, bylaws, or resolutions passed and adopted by the council;

(4) sign, number, and keep a record of all licenses, commissions, or permits granted or authorized by the council.

History: En. 11-805.1 by Sec. 4, Ch. 146, L. 1974; R.C.M. 1947, 11-805.1(part).

Cross-References

Public documents open for public inspection, Art. II, sec. 9, Mont. Const.; 2-6-102.

7-4-4512. Duties of town clerk related to town records and papers. It shall be the duty of the town clerk to file and keep all records, books, papers, or property belonging to the town and to deliver the same to his successor when qualified.

History: En. 11-805.1 by Sec. 4, Ch. 146, L. 1974; R.C.M. 1947, 11-805.1(part).

7-4-4513. Town ordinance book. The book required by 7-4-4511(2) is called "The Ordinance Book".

History: En. 11-805.1 by Sec. 4, Ch. 146, L. 1974; R.C.M. 1947, 11-805.1(part).

Part 46
Office of City Attorney

Part Cross-References

Imposition of charge upon conviction or forfeiture — use for prosecutorial salaries, 46-18-236.

7-4-4601. Qualifications for city attorney. To be appointed, the city attorney shall be a person who has been licensed to practice as an attorney in this state.

History: En. Sec. 6, p. 64, Ex. L. 1887; amd. Sec. 9, p. 182, L. 1889; amd. Sec. 4787, Pol. C. 1895; re-en. Sec. 3256, Rev. C. 1907; re-en. Sec. 5038, R.C.M. 1921; Cal. Pol. C. Sec. 4391; re-en. Sec. 5038, R.C.M. 1935; R.C.M. 1947, 11-811(part).

Cross-References

Practice of law, Art. VII, sec. 2, Mont. Const.; Title 37, ch. 61.

7-4-4602. Appointment — term of office. (1) The city attorney must be appointed by the mayor, subject to approval by the city council.

(2) The city attorney shall hold his office for 2 years unless suspended or removed as provided by law.

History: En. Sec. 6, p. 64, Ex. L. 1887; amd. Sec. 9, p. 182, L. 1889; amd. Sec. 4787, Pol. C. 1895; re-en. Sec. 3256, Rev. C. 1907; re-en. Sec. 5038, R.C.M. 1921; Cal. Pol. C. Sec. 4391; re-en. Sec. 5038, R.C.M. 1935; R.C.M. 1947, 11-811(part); amd. Sec. 2, Ch. 428, L. 1979.

Cross-References

Veterans' public employment preference, Title 39, ch. 29.

Handicapped persons' public employment preference, Title 39, ch. 30.

7-4-4603. Removal or suspension. The city attorney may be suspended or removed from office by the city council for the neglect, violation, or disregard of the duties required by law or the ordinances of the city.

History: En. Sec. 6, p. 64, Ex. L. 1887; amd. Sec. 9, p. 182, L. 1889; amd. Sec. 4787, Pol. C. 1895; re-en. Sec. 3256, Rev. C. 1907; re-en. Sec. 5038, R.C.M. 1921; Cal. Pol. C. Sec. 4391; re-en. Sec. 5038, R.C.M. 1935; R.C.M. 1947, 11-811(part).

Cross-References

Removal of appointed officer, 7-4-4113.

Official misconduct, 45-7-401.

7-4-4604. Duties. It shall be the duty of the city attorney to attend before the city court and other courts of the city and the district court and prosecute on behalf of the city. He shall, when required, draw, for the use of the council, contracts and ordinances for the government of the city and, when required, give to the mayor or city council written opinions on questions pertaining to the duties and the rights, liabilities, and powers of the corporation. He shall perform such other duties as pertain to the functions of the city council or as the city council may prescribe by resolution.

History: En. Sec. 6, p. 64, Ex. L. 1887; amd. Sec. 9, p. 182, L. 1889; amd. Sec. 4787, Pol. C. 1895; re-en. Sec. 3256, Rev. C. 1907; re-en. Sec. 5038, R.C.M. 1921; Cal. Pol. C. Sec. 4391; re-en. Sec. 5038, R.C.M. 1935; R.C.M. 1947, 11-811(part); amd. Sec. 3, Ch. 428, L. 1979.

7-4-4605. Employment of special or additional counsel. Nothing in this part shall be taken or construed as preventing the city council from employing in special cases on a contract basis:

(1) the city attorney to perform services not specifically provided for under 7-4-4604; or

(2) additional or other counsel.

History: En. Sec. 6, p. 64, Ex. L. 1887; amd. Sec. 9, p. 182, L. 1889; amd. Sec. 4787, Pol. C. 1895; re-en. Sec. 3256, Rev. C. 1907; re-en. Sec. 5038, R.C.M. 1921; Cal. Pol. C. Sec. 4391; re-en. Sec. 5038, R.C.M. 1935; R.C.M. 1947, 11-811(part); amd. Sec. 4, Ch. 428, L. 1979.

7-4-4606. Legal services for city of third class. A third class city may retain the county attorney to provide legal services for the city in cases not involving a conflict between the interests of the city and the county, either by an interlocal cooperation agreement or by mutual consent by the governing bodies of the city and county.

History: En. Sec. 4741, Pol. C. 1895; re-en. Sec. 3217, Rev. C. 1907; re-en. Sec. 4996, R.C.M. 1921; re-en. Sec. 4996, R.C.M. 1935; amd. Sec. 1, Ch. 24, L. 1975; R.C.M. 1947, 11-702(part).

Cross-References

Classifications of cities, 7-1-4111.

Interlocal cooperation agreements, Title 7, ch. 11, part 1.

Part 47
Office of City Treasurer

7-4-4701. Term of office for city treasurer. In cities of the first, second, and third classes, a city treasurer shall hold office for a term of 4 years and until the qualification of his successor.

History: En. Sec. 4, p. 122, L. 1893; amd. Sec. 4748, Pol. C. 1895; re-en. Sec. 3224, Rev. C. 1907; re-en. Sec. 5003, R.C.M. 1921; amd. Sec. 1, Ch. 60, L. 1935; re-en. Sec. 5003, R.C.M. 1935; amd. Sec. 1, Ch. 193, L. 1971; amd. Sec. 1, Ch. 343, L. 1971; R.C.M. 1947, 11-709(part).

Cross-References

Classification of municipalities, 7-1-4111.

Municipal budget law, Title 7, ch. 6, parts 42 through 46.

CHAPTER 5
GENERAL OPERATION AND CONDUCT OF BUSINESS

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Part 1

Local Government Ordinances, Resolutions, and Initiatives and Referendums

Part Cross-References

Other similar powers for:

Option 2 of city-county consolidation, 7-3-1222 through 7-3-1232.

Municipal commission government, 7-3-4222.

Municipal commission-manager government, 7-3-4324 through 7-3-4327.

County resolutions, Title 7, ch. 5, part 22.

Municipal ordinances and resolutions, Title 7, ch. 5, part 42.

County ordinance restricting phosphorus sales, Title 75, ch. 7, part 4.

7-5-101. Definition. As used in this part, "chief executive" means the elected executive in a government adopting the commission-manager form, the chairman in a government adopting the commission-chairman form, the town chairman in a government adopting the town meeting form, the commission acting as a body in a government adopting the commission form, or the officer or officers so designated in the charter in a government adopting a charter.

History: En. 47A-3-101 by Sec. 13, Ch. 477, L. 1977; R.C.M. 1947, 47A-3-101.

7-5-102. Construction of certain sections. Sections 7-5-103 through 7-5-107 merely provide a procedure for the adoption of ordinances and shall not be construed as granting authority to adopt ordinances.

History: En. 47A-3-102 by Sec. 5, Ch. 477, L. 1977; R.C.M. 1947, 47A-3-102(10).

7-5-103. Ordinance requirements. (1) All ordinances shall be submitted in writing in the form prescribed by resolution of the governing body.

(2) No ordinance passed shall contain more than one comprehensive subject, which shall be clearly expressed in its title, except ordinances for codification and revision of ordinances.

(3) An ordinance must be read and adopted by a majority vote of members present at two meetings of the governing body not less than 12 days apart. After the first adoption and reading, it must be posted and copies made available to the public.

(4) After passage and approval, all ordinances shall be signed by the chairman of the governing body and filed with the official or employee designated by ordinance to keep the register of ordinances.

History: En. 47A-3-102 by Sec. 5, Ch. 477, L. 1977; R.C.M. 1947, 47A-3-102(1) thru (3), (5).

Cross-References

County control of litter, 7-5-2109.

Regulation of pawnbrokers located outside incorporated city or town, 7-21-2120.

Restriction on local government regulation of firearms, 45-8-351.

7-5-104. Emergency ordinance. In the event of an emergency, the governing body may waive the second reading. An ordinance passed in response to an emergency shall recite the facts giving rise to the emergency and requires a two-thirds vote of the whole governing body for passage. An emergency ordinance shall be effective on passage and approval and shall remain effective for no more than 90 days.

History: **En. 47A-3-102 by Sec. 5, Ch. 477, L. 1977; R.C.M. 1947, 47A-3-102(4).**

7-5-105. Effective date of ordinance. No ordinance other than an emergency ordinance shall be effective until 30 days after second and final adoption. The ordinance may provide for a delayed effective date or may provide for the ordinance to become effective upon the fulfillment of an indicated contingency.

History: **En. 47A-3-102 by Sec. 5, Ch. 477, L. 1977; R.C.M. 1947, 47A-3-102(6).**

7-5-106. Ordinance veto procedure. If the plan of government allows the chief executive to veto an ordinance, this power must be exercised in writing prior to the next regularly scheduled meeting of the governing body. Whenever the chief executive vetoes an ordinance, the governing body must act at the next regularly scheduled meeting to either override or confirm the veto. Whenever the veto is overridden or the executive fails to act, the ordinance shall take effect.

History: **En. 47A-3-102 by Sec. 5, Ch. 477, L. 1977; R.C.M. 1947, 47A-3-102(7).**

7-5-107. Register of ordinances and codification. (1) There shall be maintained a register of ordinances in which all ordinances are entered in full after passage and approval, except when a code is adopted by reference. When a code is adopted by reference, the date and source of the code shall be entered.

(2) (a) No later than 1980 and at 5-year intervals thereafter, appropriate ordinances shall be compiled into a uniform code and published.

(b) The recodification is not effective until approved by the governing body.

History: **En. 47A-3-102 by Sec. 5, Ch. 477, L. 1977; R.C.M. 1947, 47A-3-102(8), (9).**

7-5-108. Adoption and amendment of codes by reference. (1) Any local government may adopt or repeal an ordinance which incorporates by reference the provisions of any code or portions of any code or any amendment thereof, properly identified as to date and source, without setting forth the provisions of the code in full. Notice of the intent to adopt a code by reference shall be published after first reading and prior to final adoption of the code. At least one copy of the code, portion, or amendment which is incorporated or adopted by reference shall be filed in the office of the clerk of the governing body and kept there, available for public use, inspection, and examination. The filing requirements prescribed in this section shall not be considered to be complied with unless the required copies of the codes, portion, amendment, or public record are filed with the clerk of the governing body for a period of 30 days prior to final adoption of the ordinance which incorporates the code, portion, or amendment by reference.

(2) The governing body may adopt or amend a code by reference by an emergency ordinance and without notice. The emergency ordinance is automatically repealed 90 days following its adoption and cannot be reenacted as an emergency ordinance.

(3) The process for repealing an ordinance which adopted or amended a code by reference shall be the same as for repealing any other ordinance.

(4) The filing requirement of subsection (1) shall be complied with in adopting amendments to codes.

(5) Any ordinance adopting a code, portion, or amendment by reference shall state the penalty for violating the code, portion, or amendment or any

provision thereof separately, and no part of any penalty shall be incorporated by reference.

(6) For purposes of this section, "code" means any published compilation of rules which has been prepared by various technical trade associations, model code organizations, federal agencies, or this state or any agency thereof and shall include specifically but shall not be limited to: traffic codes, building codes, plumbing codes, electrical wiring codes, health or sanitation codes, fire prevention codes, and inflammable liquids codes, together with any other code which embraces rules pertinent to a subject which is a proper local government legislative matter.

History: En. 47A-3-103 by Sec. 6, Ch. 477, L. 1977; R.C.M. 1947, 47A-3-103.

7-5-109. Penalty for violation of ordinance. (1) Except as provided in subsection (2), a local government may fix penalties for the violation of an ordinance that do not exceed a fine of $500 or 6 months' imprisonment or both the fine and imprisonment.

(2) A local government may fix penalties for the violation of an ordinance relating to local or federal wastewater pretreatment standards implementing the Federal Water Pollution Control Act, 33 U.S.C. 1251 through 1387, if the penalties do not exceed $1,000 per day for each violation or 6 months' imprisonment, or both.

History: En. 47A-3-104 by Sec. 7, Ch. 477, L. 1977; R.C.M. 1947, 47A-3-104; amd. Sec. 1, Ch. 597, L. 1993.

7-5-110 through 7-5-120 reserved.

7-5-121. Resolution requirements. (1) All resolutions shall be submitted in the form prescribed by resolution of the governing body.

(2) Resolutions may be submitted and adopted at a single meeting of the governing body.

(3) After passage and approval, all resolutions shall be entered into the minutes and signed by the chairperson of the governing body.

History: En. 47A-3-105 by Sec. 8, Ch. 477, L. 1977; R.C.M. 1947, 47A-3-105(1), (2), (4).

7-5-122. Resolution veto procedure. If the plan of government allows the chief executive to veto resolutions, this power must be exercised in writing at the next regular meeting. If the chief executive fails to act, the resolution is approved. If the chief executive vetoes a resolution, the governing body must act at the same meeting or its next regularly scheduled meeting to either override or confirm the veto.

History: En. 47A-3-105 by Sec. 8, Ch. 477, L. 1977; R.C.M. 1947, 47A-3-105(3); amd. Sec. 1, Ch. 311, L. 1979.

7-5-123. Effective date of resolutions. All resolutions shall be immediately effective unless a delayed effective date is specified.

History: En. 47A-3-105 by Sec. 8, Ch. 477, L. 1977; R.C.M. 1947, 47A-3-105(5).

7-5-124 through 7-5-130 reserved.

7-5-131. Right of initiative and referendum. (1) The powers of initiative and referendum are reserved to the electors of each local government. Resolutions and ordinances within the legislative jurisdiction and power of the governing body of the local government, except those set out in subsection (2), may be proposed or amended and prior resolutions and ordinances may be repealed in the manner provided in 7-5-132 through 7-5-137.

(2) The powers of initiative shall not extend to the following:

(a) the annual budget;

(b) bond proceedings, except for ordinances authorizing bonds;

(c) the establishment and collection of charges pledged for the payment of principal and interest on bonds; or

(d) the levy of special assessments pledged for the payment of principal and interest on bonds.

History: En. 47A-3-106 by Sec. 9, Ch. 477, L. 1977; R.C.M. 1947, 47A-3-106(1), (2).

Cross-References

Right of initiative and referendum, Art. XI, sec. 8, Mont. Const.

7-5-132. Procedure to exercise right of initiative or referendum. (1) The electors may initiate and amend ordinances and require submission of existing ordinances to a vote of the people by petition. If an approved petition containing sufficient signatures is filed prior to the ordinance's effective date, a petition requesting a referendum on the ordinance shall delay the ordinance's effective date until the ordinance is ratified by the electors. A petition requesting a referendum on an emergency ordinance filed within 30 days of its effective date shall suspend the ordinance until ratified by the electors.

(2) The governing body may refer existing or proposed ordinances to a vote of the people by resolution.

(3) A petition or resolution for initiative or referendum shall:

(a) embrace only a single comprehensive subject;

(b) set out fully the ordinance sought by petitioners or, in the case of an amendment, set out fully the ordinance sought to be amended and the proposed amendment or, in the case of referendum, set out the ordinance sought to be repealed;

(c) be in the form prescribed in Title 13, chapter 27, except as specifically provided in this part;

(d) contain the signatures of 15% of the registered electors of the local government; and

(e) contain transition provisions if the measure changes terms of office or forms of government.

History: En. 47A-3-106 by Sec. 9, Ch. 477, L. 1977; R.C.M. 1947, 47A-3-106(3) thru (5); amd. Sec. 299, Ch. 571, L. 1979; amd. Sec. 2, Ch. 359, L. 1991.

7-5-133. Processing of petition. (1) The governing body may, within 60 days of receiving the petition, take the action called for in the petition. If the action is taken, the question need not be submitted to the electors.

(2) If the governing body does not within 60 days take the proposed action, then the question must be submitted to the electors at the next regular or primary election.

History: En. 47A-3-106 by Sec. 9, Ch. 477, L. 1977; R.C.M. 1947, 47A-3-106(part); amd. Sec. 24, Ch. 387, L. 1995.

Compiler's Comments

1995 Amendment: Chapter 387 in (2) substituted "regular or primary election" for "school, primary, or general election or a special election called for that purpose"; and made minor changes in style.

7-5-134. Signatures — submission for approval — statement of purpose and implication. (1) In order to determine the number of signatures needed on a petition to meet the percentage requirements of this part, the number of electors shall be the number of individuals registered to vote at the preceding general election for the local government.

(2) Before a petition may be circulated for signatures, a sample petition must be submitted in the form in which it will be circulated to the county election administrator for approval as to form.

(3) The county election administrator shall refer a copy of the sample petition sheet to the attorney for the local government unit. The local government attorney shall review the sample petition for form and compliance with 7-5-131 and 7-5-132 and prepare a concise ballot statement not exceeding 100 words. The ballot statement must be an accurate and impartial explanation of the purpose of the proposed ballot issue in plain, easily understood language. The statement may not be an argument and may not be written so as to create prejudice for or against the issue. The statement prepared pursuant to this subsection, unless altered by court order, must be used as the petition title and the ballot statement if the issue is placed on the ballot.

(4) At the time the statement of purpose is prepared, the attorney shall prepare a statement of the implication of a vote for and a statement of the implication of a vote against the ballot issue. Each statement of implication may be no more than 25 words and must be in simple, impartial language that clearly explains the meaning of a vote for or a vote against the issue. Each statement of implication prepared pursuant to this section, unless altered by a court order, is to be used on the petition and the ballot if the issue is placed on the ballot. The statements of implication must be placed beside the diagram provided for marking of the ballot in a manner similar to the following example:

☐ FOR weekly commission meetings.

☐ AGAINST weekly commission meetings.

(5) If the petition is rejected as to form, the election administrator must send written notice and a statement of the reasons for rejection to the person who submitted the sample petition within 21 days after submission of the sample.

(6) If the petition is approved as to form, the election administrator shall send written notice to the person who submitted the sample petition within 21 days after submission of the sample. This notice must include the ballot statement and the statements of implication prepared by the local government attorney.

(7) All petition signatures must be collected and filed within 90 days of the date of the notice that the petition has been approved as to form.

History: (1)En. 47A-3-107 by Sec. 10, Ch. 477, L. 1977; R.C.M. 1947, 47A-3-107; (2)—(7)En. Secs. 1, 2, Ch. 69, L. 1981; amd. Sec. 3, Ch. 359, L. 1991.

7-5-135. Suit to determine validity and constitutionality of petition and proposed action. (1) The governing body may direct that a suit be brought in district court by the local government to determine whether the proposed action would be valid and constitutional, but such a suit must be initiated within 14 days of the date a petition has been approved as to form under 7-5-134.

(2) An action brought under this section takes precedence over other cases and matters in the district court. The court shall as soon as possible render a decision as to whether the proposed action would be valid and constitutional.

(3) If the defendant prevails, he is entitled to be reimbursed by the local government for costs and reasonable attorney's fees incurred.

(4) The 90-day period during which petition signatures must be collected under 7-5-134 begins on the date of the court order resolving the suit.

History: En. 47A-3-106 by Sec. 9, Ch. 477, L. 1977; R.C.M. 1947, 47A-3-106(part); amd. Sec. 1, Ch. 567, L. 1985.

Cross-References

Attorneys' fees, Title 25, ch. 10, part 3.

7-5-136. Submission of question to electors. (1) Any ordinance proposed by petition, any amended ordinance proposed by petition, or any referendum on an ordinance entitled to be submitted to the electors must be voted on at the next regular election to be held in the local government unless:

(a) the petition asks that the question be submitted at a special election and is signed by at least 25% of the electors of the local government, in which case the governing body shall call a special election to be held in conjunction with a regular or primary election; or

(b) the governing body calls for a special election on the question to be held in conjunction with a regular or primary election.

(2) A special election may not be held sooner than 75 days after the adequacy of the petition is determined by the election administrator or the governing body orders a special election.

(3) If the adequacy of the petition is determined by the election administrator less than 75 days prior to the next regular election, the election must be delayed until the following regular election unless a special election is called.

(4) Whenever a measure is ready for submission to the electors, the appropriate election administrator shall in writing notify the governing body and shall publish notice of the election and the ordinance that is to be proposed or amended. In the case of a referendum, the ordinance sought to be repealed must be published.

(5) The question must be placed on the ballot, giving the electors a choice between accepting or rejecting the proposal.

(6) If a majority of those voting favor the proposal, it becomes effective when the election results are officially declared unless otherwise stated in the proposal.

History: En. 47A-3-106 by Sec. 9, Ch. 477, L. 1977; R.C.M. 1947, 47A-3-106(7); amd. Sec. 300, Ch. 571, L. 1979; amd. Sec. 16, Ch. 250, L. 1985; amd. Sec. 25, Ch. 387, L. 1995.

Compiler's Comments

1995 Amendment: Chapter 387 in (1)(a) and (1)(b), at end, inserted "to be held in conjunction with a regular or primary election"; and made minor changes in style.

7-5-137. Effect of repeal or enactment of ordinance by initiative or referendum. If an ordinance is repealed or enacted pursuant to a proposal initiated by the electors of a local government, the governing body may not for 2 years reenact or repeal the ordinance. If during the 2-year period the governing body enacts an ordinance similar to the one repealed pursuant to a referendum of the electors, a suit may be brought to determine whether the new ordinance is a reenactment without material change of the repealed ordinance. This section shall not prevent exercise of the initiative at any time to procure a reenactment of an ordinance repealed pursuant to referendum of the electors.

History: En. 47A-3-106 by Sec. 9, Ch. 477, L. 1977; R.C.M. 1947, 47A-3-106(6)(d).

Part 2

Operation of Consolidated Units of Local Government

Part Cross-References

Business improvement districts, Title 7, ch. 12, part 11.

7-5-201. Operation of self-government consolidated units of local government. (1) Whenever existing law contains different provisions and procedures for the functioning of counties and municipalities, including but not limited to such areas as election procedures, issuance of bonds, adoption of budgets, creation of special districts, levying of taxes, and provision of services, the governing body of a self-government consolidated unit of local government which contains at least one county and one municipality shall by ordinance adopt either the county or municipality provisions. The ordinance may provide for necessary changes in the statutes to accommodate the structure of the consolidated unit. This subsection applies to self-government consolidated units only in those areas where such units are subject to state law under 7-1-111 through 7-1-114.

(2) A combination of county and municipal offices in a self-government consolidated unit may be accomplished by ordinance whenever such a combination is necessary for carrying out a duty assigned by state law to the local government. Whenever state law imposes a duty upon a specific official or employee of a self-government consolidated unit of local government and the local government under its adopted alternative form of government does not have such an official or employee, the governing body may by ordinance assign that duty to the appropriate official or employee of the local government. The governing body of any self-government consolidated unit of local government may by ordinance assign responsibility to carry out any function or provide any service required by state law to one or more departments, officers, or employees of the local government notwithstanding the fact that the state law may assign the function or service to a specific office.

History: En. 47A-3-108 by Sec. 11, Ch. 477, L. 1977; R.C.M. 1947, 47A-3-108.

Part 3

Local Government Elections (Repealed. Sec. 407, Ch. 571, L. 1979)

Part Compiler's Comments

Histories of Repealed Sections:

7-5-301. En. 47A-3-301 by Sec. 1, Ch. 477, L. 1977; R.C.M. 1947, 47A-3-301.

7-5-302. En. 47A-3-302 by Sec. 2, Ch. 477, L. 1977; R.C.M. 1947, 47A-3-302; amd. Sec. 1, Ch. 359, L. 1979.

7-5-303. En. 47A-3-303 by Sec. 3, Ch. 477, L. 1977; R.C.M. 1947, 47A-3-303.

7-5-304 through 7-5-310 reserved.

7-5-311. En. Sec. 11, Ch. 368, L. 1969; R.C.M. 1947, 23-2801.

Parts 4 through 20 reserved

Part 21

Conduct of County Government

Part Cross-References

Business improvement districts, Title 7, ch. 12, part 11.

7-5-2101. General authority of county commissioners. (1) The board of county commissioners has jurisdiction and power, under such limitations and restrictions as are prescribed by law, to represent the county and have the care of the county property and the management of the business and concerns of the county in all cases where no other provision is made by law.

(2) The board has jurisdiction and power, under such limitations and restrictions as are prescribed by law, to perform all other acts and things required by law not enumerated in this title or which may be necessary to the full discharge of the duties of the chief executive authority of the county government.

History: (1)En. Subd. 22, Sec. 1, Ch. 100, L. 1931; re-en. Sec. 4465.21, R.C.M. 1935; amd. Sec. 1, Ch. 144, L. 1949; Sec. 16-1024, R.C.M. 1947; (2)En. Subd. 25, Sec. 1, Ch. 100, L. 1931; re-en. Sec. 4465.24, R.C.M. 1935; Sec. 16-1027, R.C.M. 1947; R.C.M. 1947, 16-1024(part), 16-1027.

Cross-References

Restriction on local government regulation of firearms, 45-8-351.

7-5-2102. Promulgation and enforcement of rules. The board of county commissioners has jurisdiction and power, under such limitations and restrictions as are prescribed by law, to make and enforce such rules for its government, the preservation of order, and the transaction of business as may be necessary.

History: En. Subd. 23, Sec. 1, Ch. 100, L. 1931; re-en. Sec. 4465.22, R.C.M. 1935; R.C.M. 1947, 16-1025.

Cross-References

Local government not subject to Montana Administrative Procedure Act, 2-4-102.

7-5-2103. Division of county into districts. The board of county commissioners has jurisdiction and power, under such limitations and restrictions as are prescribed by law, to divide the counties into township, school, road, and other districts required by law; change the same; and create others as convenience requires by consolidation of two or more townships or otherwise.

History: En. Subd. 2, Sec. 1, Ch. 100, L. 1931; re-en. Sec. 4465.1, R.C.M. 1935; amd. Sec. 1, Ch. 72, L. 1951; R.C.M. 1947, 16-1002(part).

Cross-References

School districts — establishment — boundary changes, Title 20, ch. 6, parts 2 through 4.

7-5-2104. Direction of lawsuits. The board of county commissioners has jurisdiction and power, under such limitations and restrictions as are prescribed by law, to direct and control the prosecution and defense of all suits to which the county is a party.

History: En. Subd. 15, Sec. 1, Ch. 100, L. 1931; re-en. Sec. 4465.14, R.C.M. 1935; R.C.M. 1947, 16-1017.

Cross-References

Duty of County Attorney, 7-4-2711.

7-5-2105. Authority to contract for printing and supplies. The board of county commissioners has jurisdiction and power, under such limitations and restrictions as are prescribed by law, to contract for the county printing and to provide books and stationery for county officers.

History: En. Subd. 20, Sec. 1, Ch. 100, L. 1931; re-en. Sec. 4465.19, R.C.M. 1935; R.C.M. 1947, 16-1022.

Cross-References

County printing, Title 7, ch. 5, part 24.

7-5-2106. Control of conflict of interest. No member of the board must be directly or indirectly interested:

(1) in any property purchased for the use of the county;

(2) in any purchase or sale of property belonging to the county; or

(3) in any contract made by the board or other person on behalf of the county for the erection of public buildings, the opening or improvement of roads, the building of bridges, or the purchasing of supplies or for any other purpose.

History: En. Sec. 4292, Pol. C. 1895; re-en. Sec. 2951, Rev. C. 1907; re-en. Sec. 4606, R.C.M. 1921; Cal. Pol. C. Sec. 4077; re-en. Sec. 4606, R.C.M. 1935; R.C.M. 1947, 16-1804.

Cross-References

Standards of conduct, Title 2, ch. 2.

Official misconduct, 45-7-401.

7-5-2107. Employment of personnel by county commissioners. The board of county commissioners may employ such persons as it deems necessary to assist the board in the performance of its duties. Each board may adopt a resolution defining the qualifications, duties, salary, and responsibilities of such persons. Such persons may be paid monthly, twice monthly, or every 2 weeks.

History: En. Sec. 1, Ch. 309, L. 1973; R.C.M. 1947, 16-913; amd. Sec. 2, Ch. 109, L. 1979.

Cross-References

Nepotism prohibited in public employment practices, Title 2, ch. 2, part 3.

Veterans' public employment preference, Title 39, ch. 29.

Handicapped persons' public employment preference, Title 39, ch. 30.

7-5-2108. County work week. All full-time salaried county employees shall work a minimum of 40 hours per week.

History: En. Sec. 1134, Pol. C. 1895; re-en. Sec. 436, Rev. C. 1907; re-en. Sec. 453, R.C.M. 1921; Cal. Pol C. Sec. 1030; amd. Sec. 1, Ch. 5, L. 1931; re-en. Sec. 453, R.C.M. 1935; amd. Sec. 1, Ch. 22, L. 1951; amd. Sec. 1, Ch. 253, L. 1957; amd. Sec. 1, Ch. 2, L. 1961; amd. Sec. 1, Ch. 33, L. 1961; R.C.M. 1947, 59-510(2)(part).

Cross-References

Work periods — Sheriff's department, 7-4-2509.

Hours of labor — county government, 39-4-107.

7-5-2109. County control of litter. (1) (a) The governing body of a county may regulate, control, and prohibit littering on any county road and on land within the county by the adoption of an ordinance that substantially complies with the provisions of 7-5-103 through 7-5-107. The ordinance may apply to portions of the county and may apply to persons other than the owners of the property on which littering occurs.

(b) The ordinance does not apply to lead, copper, or brass deposits directly resulting from shooting activities at a shooting range.

(c) The ordinance does not apply to a "notice of violation" card placed on a motor vehicle illegally parked in a disability parking space.

(2) The governing body of a county may establish a fine not to exceed $200 as a penalty for violation of the ordinance referred to in subsection (1). A violation of the ordinance may not be punishable by imprisonment.

History: En. Sec. 1, Ch. 508, L. 1983; amd. Sec. 6, Ch. 415, L. 1991; amd. Sec. 1, Ch. 406, L. 1993.

7-5-2110. Community decay defined. (1) In 7-5-2111, "community decay" means a public nuisance created by allowing rubble, debris, junk, or refuse to accumulate resulting in conditions that are injurious to health, indecent, offensive to the senses, or obstruct the free use of property so as to interfere with the comfortable enjoyment of life or property.

(2) "Community decay" as used in 7-5-2111 may not be construed or defined to apply to:

(a) normal farming, ranching, or other agricultural operations or to a farm, ranch, or other agricultural facility, and any appurtenances thereof, during the course of its normal operations; or

(b) normal activities at a shooting range.

History: En. Sec. 1, Ch. 411, L. 1985; amd. Sec. 7, Ch. 415, L. 1991.

7-5-2111. Control of community decay. (1) The governing body of a county may regulate, control, and prohibit conditions that contribute to community decay on or adjacent to any public roadway within the county by adoption of an ordinance that substantially complies with the provisions of 7-5-103 through 7-5-107.

(2) An ordinance adopted under subsection (1) may include time limits for removal or shielding of such conditions as considered appropriate by the governing body.

(3) Nothing in this section restricts the governing body from enacting community decay controls affecting only portions of the county.

(4) Nothing in this section or 7-5-2110 may be construed to abrogate or affect the provisions of any lawful ordinance, regulation, or resolution that is more restrictive than the provisions of this section or 7-5-2110.

(5) For the purposes of enforcing an ordinance adopted under subsection (1), the county governing body may provide that, after giving due notice, in writing, of violation and upon the failure of the property owner to comply with the ordinance, officers and employees of the county may enter upon the property for the specific purpose of abating the violation of the ordinance and may assess the property owner for the actual costs for the abatement. Nonpayment of such an assessment becomes a lien upon the property and is enforceable in the same manner as the nonpayment of property taxes is enforced.

History: En. Sec. 2, Ch. 411, L. 1985.

7-5-2112 through 7-5-2120 reserved.

7-5-2121. Administration of oaths. Any member of the board of county commissioners may administer oaths to any persons concerning any matter submitted to them or connected with their powers or duties.

History: En. Sec. 4214, Pol. C. 1895; re-en. Sec. 2885, Rev. C. 1907; re-en. Sec. 4456, R.C.M. 1921; Cal. Pol. C. Sec. 4028; re-en. Sec. 4456, R.C.M. 1935; R.C.M. 1947, 16-905(part).

Cross-References

Oaths — generally, Title 1, ch. 6.

7-5-2122. Meetings of board of county commissioners. (1) The governing body of the county shall establish by resolution a regular meeting date and notify the public of that date.

(2) The governing body of the county, except as may be otherwise required of them, may meet at the county seat of their respective counties at any time for the purpose of attending to county business. Commissioners may, by resolution and prior 2 days' posted public notice, designate another meeting time and place.

History: En. Sec. 380, 5th Div. Rev. Stat. 1879; amd. Sec. 785, 5th Div. Comp. Stat. 1887; amd. Sec. 4220, Pol. C. 1895; re-en. Sec. 2891, Rev. C. 1907; amd. Sec. 1, Ch. 148, L. 1915; re-en. Sec. 4462, R.C.M. 1921; Cal. Pol. C. Sec. 4032; amd. Sec. 1, Ch. 35, L. 1929; re-en. Sec. 4462, R.C.M. 1935; amd. Sec. 1, Ch. 132, L. 1959; amd. Sec. 5, Ch. 391, L. 1973; amd. Sec. 1, Ch. 27, L. 1975; R.C.M. 1947, 16-910.

7-5-2123. Publication of board proceedings and annual financial statement. (1) (a) The board of county commissioners has jurisdiction and power, under the limitations and restrictions prescribed by law, to publish in a newspaper at the adjournment of each session of the board, in full and complete detail or in summary form or by reference, with the full and complete text made available on request, a complete list of all claims ordered paid for all purposes, showing the name, purpose, and amount, and a fair summary of the minutes and records of all of its proceedings.

(b) The board may publish the county clerk's annual statement of the financial condition of the county, in full and complete detail or in summary form. If the board does not publish the annual statement in complete detail or in summary form, it shall publish a notice that the annual statement is available and will be provided upon request from the county clerk.

(2) Publication in full, in summary, or by reference of the minutes and records of proceedings must be made within 21 days after the adjournment of the session. Publication of the financial statement or notice of the availability of the financial statement must be made within 30 days after the presentation of the financial statement to the board. The board may not allow or order paid any claim for any publication of minutes and records of proceedings or annual financial statement unless the publication is made within the time prescribed in this subsection.

History: En. Subd. 21, Sec. 1, Ch. 100, L. 1931; re-en. Sec. 4465.20, R.C.M. 1935; R.C.M. 1947, 16-1023; amd. Sec. 1, Ch. 193, L. 1985; amd. Sec. 1, Ch. 194, L. 1989; amd. Sec. 1, Ch. 299, L. 1995.

Compiler's Comments

1995 Amendment: Chapter 299 in (1)(b), at beginning of first sentence, deleted "annually" and inserted second sentence requiring notice of availability if financial statement is not published annually; in (2), in second sentence after first "statement", inserted "or notice of the availability of the financial statement"; and made minor changes in style. Amendment effective July 1, 1995.

Cross-References

County printing, Title 7, ch. 5, part 24.

7-5-2124. Repealed. Sec. 15, Ch. 311, L. 1979.

History: En. Sec. 4232, Pol. C. 1895; re-en. Sec. 2896, Rev. C. 1907; re-en. Sec. 4469, R.C.M. 1921; Cal. Pol. C. Sec. 4047; re-en. Sec. 4469, R.C.M. 1935; R.C.M. 1947, 16-1103(part).

7-5-2125. Open meetings. All meetings of the board of county commissioners must be public.

History: En. Sec. 4216, Pol. C. 1895; re-en. Sec. 2887, Rev. C. 1907; re-en. Sec. 4458, R.C.M 1921; Cal. Pol. C. Sec. 4035; re-en. Sec. 4458, R.C.M. 1935; R.C.M 1947, 16-906(part).

Cross-References

Open meetings, Art. II, sec. 9, Mont. Const.; Title 2, ch. 3, part 2.

7-5-2126. Attendance at board meetings by sheriff. The board of county commissioners has the power to direct the sheriff to attend, in person or by deputy, all the meetings of the board; to preserve order; and to serve notices or citations as directed by the board.

History: En. Sec. 4232, Pol. C. 1895; re-en. Sec. 2896, Rev. C. 1907; re-en. Sec. 4469, R.C.M. 1921; Cal. Pol. C. Sec. 4047; re-en. Sec. 4469, R.C.M. 1935; R.C.M. 1947, 16-1103(part).

7-5-2127. Subpoena power of county commissioners. (1) The board may, by its chairman or the chairman of any committee, issue subpoenas to compel the attendance of any person and the production of any books or papers relating to the affairs of the county, for the purpose of examination upon any matter within its jurisdiction.

(2) When served, a witness is bound to attend and to answer all questions which he would be bound to answer before any court. Disobedience to the subpoena or to an order to attend or to testify may be enforced by the board, and for that purpose, the board has all the powers conferred by and the witness is subject to all the provisions of Title 26, chapter 2, parts 1 and 2; 26-2-303; and Rule 45(c), M.R.Civ.P.

History: (1)En. Sec. 4282, Pol. C. 1895; re-en. Sec. 2941, Rev. C. 1907; re-en. Sec. 4517, R.C.M. 1921, Cal. Pol. C. Sec. 4067; re-en. Sec. 4517, R.C.M. 1935; Sec. 16-1158, R.C.M. 1947; (2)En. Sec. 4283, Pol. C. 1895; re-en. Sec. 2942, Rev. C. 1907; re-en. Sec. 4518, R.C.M. 1921; Cal. Pol. C. Sec. 4068; re-en. Sec. 4518, R.C.M. 1935; Sec. 16-1159, R.C.M. 1947; R.C.M. 1947, 16-1158, 16-1159.

7-5-2128. Fees of officers and witnesses. Neither the officers serving subpoenas nor the witnesses subpoenaed to testify in relation to matters of public concern before the board of county commissioners are entitled to have their fees prepaid, but officers must serve the subpoenas and witnesses must attend without their fees being prepaid. The board must allow the witnesses reasonable compensation for their attendance, but in no case to exceed the amount for like services in courts.

History: En. Sec. 4284, Pol. C. 1895; re-en. Sec. 2943, Rev. C. 1907; re-en. Sec. 4519, R.C.M. 1921; Cal. Pol. C. Sec. 4069; re-en. Sec. 4519, R.C.M. 1935; R.C.M. 1947, 16-1160.

Cross-References

Service of process fees, 7-32-2141.

Witness fees for courts, Title 26, ch. 2, part 5.

7-5-2129. Certain records to be kept by board. The board of county commissioners must cause to be kept:

(1) a "Minute Book" in which must be recorded all orders and decisions made by them and the daily proceedings had at all regular and special meetings;

(2) a "Road Book" containing all proceedings and adjudications relating to the establishment, maintenance, change, and discontinuance of roads and road districts or relating to road supervisors and their reports and accounts;

(3) a "Franchise Book" containing all franchises granted by them, for what purpose, the length of time and to whom granted, and the amount of bond and license tax required;

(4) a "Warrant Book" in which must be entered, in the order of drawing, all warrants drawn on the treasury, with their number and reference to the order on the minute book and with the date, amount, on what account, and name of payee.

History: En. Sec. 4219, Pol. C. 1895; re-en. Sec. 2890, Rev. C. 1907; re-en. Sec. 4461, R.C.M. 1921; Cal. Pol. C. Sec. 4031; re-en. Sec. 4461, R.C.M. 1935; R.C.M. 1947, 16-909.

7-5-2130. Records to be signed. The records must be signed by the chairman and the clerk.

History: En. Sec. 4217, Pol. C. 1895; re-en. Sec. 2888, Rev. C. 1907; re-en. Sec. 4459, R.C.M. 1921; Cal. Pol. C. Sec. 4029; re-en. Sec. 4459, R.C.M. 1935; R.C.M. 1947, 16-907(part).

7-5-2131. Records to be available to public. The books, records, and accounts must be kept at the office of the clerk and must be open for public inspection free of charge.

History: En. Sec. 4216, Pol. C. 1895; re-en. Sec. 2887, Rev. C. 1907; re-en. Sec. 4458, R.C.M 1921; Cal. Pol. C. Sec. 4035; re-en. Sec. 4458, R.C.M. 1935; R.C.M 1947, 16-906(part); amd. Sec. 12, Ch. 420, L. 1993.

Cross-References

Public inspection of records, Art. II, sec. 9, Mont. Const.; 2-6-102.

7-5-2132. Destruction of county records. Upon the order of the board of county commissioners and with the written approval of the local government records destruction subcommittee provided for in 2-6-403, a county officer may destroy records that have met the retention period, as contained in the local government records retention and disposition schedules, and that are no longer needed by the office.

History: (1)En. Sec. 2, Ch. 92, L. 1935; re-en. Sec. 455.2, R.C.M. 1935; amd. Sec. 1, Ch. 166, L. 1967; amd. Sec. 79, Ch. 348, L. 1974; amd. Sec. 36, Ch. 213, L. 1975; Sec. 59-514, R.C.M. 1947; (2)En. Sec. 4, Ch. 92, L. 1935; re-en. Sec. 455.4, R.C.M. 1935; amd. Sec. 12, Ch. 189, L. 1953; amd. Sec. 1, Ch. 90, L. 1963; amd. Sec. 1, Ch. 95, L. 1967; Sec. 59-516, R.C.M. 1947; R.C.M. 1947, 59-514(1), 59-516(part); amd. Sec. 7, Ch. 274, L. 1981; amd. Sec. 1, Ch. 287, L. 1983; amd. Sec. 1, Ch. 430, L. 1985; amd. Sec. 13, Ch. 420, L. 1993.

7-5-2133 through 7-5-2140 reserved.

7-5-2141. Membership in associations of counties. The boards of county commissioners of the several counties of Montana are hereby authorized and empowered to:

(1) take out county membership in and cooperate with associations and organizations of other counties or county officials of this state and of other states for the furtherance of good government and the protection of county interests; and

(2) pay for such membership in such associations or organizations with county funds.

History: En. Sec. 1, Ch. 104, L. 1947; R.C.M. 1947, 16-1034.

7-5-2142. Membership in associations of clerk and recorders. (1) The county clerk and recorders of the counties of Montana are hereby authorized and empowered to take out county membership in and to cooperate with associations and organizations of county clerk and recorders of this state and of other states for the furtherance of good government and the protection of county interests.

(2) All county clerk and recorders of the various counties throughout the state shall be allowed actual transportation expenses and per diem allowance for attendance upon any general meeting of the Montana association of county clerk and recorders held within the state not more often than once a year, and the proportionate expenses and charges against each county as a member of such association shall be paid by such county.

History: Ap. p. Sec. 1, Ch. 84, L. 1963; Sec. 16-2926, R.C.M. 1947; Ap. p. Sec. 1, Ch. 241, L. 1921; re-en. Sec. 443, R.C.M. 1921; amd. Sec. 1, Ch. 124, L. 1923; amd. Sec. 1, Ch. 48, L. 1927; amd. Sec. 1, Ch. 86, L. 1931; amd. Sec. 1, Ch. 130, L. 1933; re-en. Sec. 443, R.C.M. 1935; amd. Sec. 1, Ch. 119, L. 1943; amd. Sec. 1, Ch. 58, L. 1949; amd. Sec. 1, Ch. 184, L. 1957; amd. Sec. 11, Ch. 80, L. 1961; amd. Sec. 1, Ch. 85, L. 1963; amd. Sec. 1, Ch. 79, L. 1965; amd. Sec. 1, Ch. 66, L. 1967; amd. Sec. 1, Ch. 174, L. 1967; amd. Sec. 1, Ch. 182, L. 1973; Sec. 25-508, R.C.M. 1947; R.C.M. 1947, 16-2926, 25-508(4).

7-5-2143. Membership in associations of clerks of district courts. (1) The county clerks of the district courts of the counties of Montana are hereby authorized and empowered to take out county membership in and to cooperate with associations and organizations of county clerks of the district courts of this state and of other states for the furtherance of good government and the protection of county interests.

(2) All county clerks of the district court of the various counties throughout the state shall be allowed actual transportation expenses and per diem allowance for attendance upon any general meeting of the Montana association of clerks of court held within the state not more often than once a year, and the proportionate expenses and charges against each county as a member of such association shall be paid by such county.

History: Ap. p. Sec. 1, Ch. 64, L. 1967; Sec. 16-3006, R.C.M. 1947; Ap. p. Sec. 1, Ch. 241, L. 1921; re-en. Sec. 443, R.C.M. 1921; amd. Sec. 1, Ch. 124, L. 1923; amd. Sec. 1, Ch. 48, L. 1927; amd. Sec. 1, Ch. 86, L. 1931; amd. Sec. 1, Ch. 130, L. 1933; re-en. Sec. 443, R.C.M. 1935; amd. Sec. 1, Ch. 119, L. 1943; amd. Sec. 1, Ch. 58, L. 1949; amd. Sec. 1, Ch. 184, L. 1957; amd. Sec. 11, Ch. 80, L. 1961; amd. Sec. 1, Ch. 85, L. 1963; amd. Sec. 1, Ch. 79, L. 1965; amd. Sec. 1, Ch. 66, L. 1967; amd. Sec. 1, Ch. 174, L. 1967; amd. Sec. 1, Ch. 182, L. 1973; Sec. 25-508, R.C.M. 1947; R.C.M. 1947, 16-3006, 25-508(5).

7-5-2144. Membership in associations of county treasurers. (1) County treasurers may take out county membership in and cooperate with associations and organizations of county treasurers of this state for the furtherance of good government and the protection of county interests.

(2) All county treasurers of the various counties throughout the state are allowed actual transportation expenses and per diem allowance for attendance at any general meeting of the Montana association of county treasurers held within the state not more often than once a year, and the proportionate

expenses and charges against each county as a member of the association must be paid by the county.

History: **(1)En. Sec. 1, Ch. 114, L. 1973; Sec. 16-2627, R.C.M. 1947; (2)En. Sec. 1, Ch. 241, L. 1921; re-en. Sec. 443, R.C.M. 1921; amd. Sec. 1, Ch. 124, L. 1923; amd. Sec. 1, Ch. 48, L. 1927; amd. Sec. 1, Ch. 86, L. 1931; amd. Sec. 1, Ch. 130, L. 1933; re-en. Sec. 443, R.C.M. 1935; amd. Sec. 1, Ch. 119, L. 1943; amd. Sec. 1, Ch. 58, L. 1949; amd. Sec. 1, Ch. 184, L. 1957; amd. Sec. 11, Ch. 80, L. 1961; amd. Sec. 1, Ch. 85, L. 1963; amd. Sec. 1, Ch. 79, L. 1965; amd. Sec. 1, Ch. 66, L. 1967; amd. Sec. 1, Ch. 174, L. 1967; amd. Sec. 1, Ch. 182, L. 1973; Sec. 25-508, R.C.M. 1947; R.C.M. 1947, 16-2627, 25-508(6); amd. Sec. 1, Ch. 216, L. 1993.**

7-5-2145. Attendance at meetings and conventions by county officers and employees. (1) Unless otherwise provided by law, no county officer or employee may receive payment from any public funds for traveling expenses or other expenses of any sort for attendance at any convention, meeting, or other gathering of public officers except for attendance at such convention, meeting, or other gathering as the officer or employee may by virtue of his office find it necessary to attend.

(2) Three members of the board of county commissioners may be allowed actual transportation expenses and per diem for attendance at any general meeting of county commissioners or assessors held within the state not more often than once a year, and the proportionate expenses and charges against each county as a member of such association shall also be paid.

(3) County attorneys, sheriffs, assessors, and justices of the peace may attend their respective meetings or conventions held within the state and are allowed actual traveling expenses, not more often than once a year, for attending the same.

(4) Any county officer paid on a per-day basis for his performance of official duties is allowed his per-day rate of pay for attendance at any convention, meeting, or other gathering of public officers that the officer may by virtue of his office find it necessary to attend.

History: **En. Sec. 1, Ch. 241, L. 1921; re-en. Sec. 443, R.C.M. 1921; amd. Sec. 1, Ch. 124, L. 1923; amd. Sec. 1, Ch. 48, L. 1927; amd. Sec. 1, Ch. 86, L. 1931; amd. Sec. 1, Ch. 130, L. 1933; re-en. Sec. 443, R.C.M. 1935; amd. Sec. 1, Ch. 119, L. 1943; amd. Sec. 1, Ch. 58, L. 1949; amd. Sec. 1, Ch. 184, L. 1957; amd. Sec. 11, Ch. 80, L. 1961; amd. Sec. 1, Ch. 85, L. 1963; amd. Sec. 1, Ch. 79, L. 1965; amd. Sec. 1, Ch. 66, L. 1967; amd. Sec. 1, Ch. 174, L. 1967; amd. Sec. 1, Ch. 182, L. 1973; R.C.M. 1947, 25-508(part); amd. Sec. 2, Ch. 311, L. 1979; amd. Sec. 1, Ch. 384, L. 1981; amd. Sec. 1, Ch. 367, L. 1983.**

7-5-2146. Membership in associations of county school superintendents — payment of expenses. (1) The county superintendents of schools of the counties of Montana may obtain county membership in and cooperate with associations and organizations of county school superintendents of the state and of other states for the benefit of good government and the protection of county interests.

(2) County school superintendents of the counties of the state are entitled to expenses as provided for state officials in 2-18-501 through 2-18-503 for attendance at any general meeting of the Montana association of county school superintendents held within the state, and the proportionate expenses and charges against each county as a member of such an association must be paid by the county.

History: **En. Sec. 1, Ch. 46, L. 1989.**

Cross-References

County Superintendent of Schools, Title 20, ch. 3, part 2.

Part 22
County Resolutions (Repealed)

7-5-2201. Repealed. Sec. 3, Ch. 309, L. 1993.

History: En. Sec. 3, Ch. 64, L. 1973; R.C.M. 1947, 37-303(part).

7-5-2202. Repealed. Sec. 3, Ch. 309, L. 1993.

History: En. Sec. 3, Ch. 64, L. 1973; R.C.M. 1947, 37-303(part).

7-5-2203 through 7-5-2210 reserved.

7-5-2211 through 7-5-2222. Repealed. Sec. 407, Ch. 571, L. 1979.

Compiler's Comments

Histories of Repealed Sections:

7-5-2211. En. Sec. 1, Ch. 64, L. 1973; amd. Sec. 1, Ch. 389, L. 1975; R.C.M. 1947, 37-301(part).

7-5-2212. En. Sec. 1, Ch. 64, L. 1973; amd. Sec. 1, Ch. 389, L. 1975; R.C.M. 1947, 37-301(part).

7-5-2213. En. Sec. 1, Ch. 64, L. 1973; amd. Sec. 1, Ch. 389, L. 1975; R.C.M. 1947, 37-301(part).

7-5-2214. En. Sec. 1, Ch. 64, L. 1973; amd. Sec. 1, Ch. 389, L. 1975; R.C.M. 1947, 37-301(3).

7-5-2215. En. Secs. 4, 10, Ch. 64, L. 1973; R.C.M. 1947, 37-304, 37-310.

7-5-2216. En. Sec. 11, Ch. 64, L. 1973; R.C.M. 1947, 37-311.

7-5-2217. En. Secs. 2, 5, 6, Ch. 64, L. 1973; R.C.M. 1947, 37-302, 37-305, 37-306.

7-5-2218. En. Sec. 7, Ch. 64, L. 1973; R.C.M 1947, 37-307.

7-5-2219. En. Sec. 8, Ch. 64, L. 1973; R.C.M. 1947, 37-308(part).

7-5-2220. En. Sec. 9, Ch. 64, L. 1973; R.C.M. 1947, 37-309.

7-5-2221. En. Sec. 8, Ch. 64, L. 1973; R.C.M. 1947, 37-308(part).

7-5-2222. En. Sec. 8, Ch. 64, L. 1973; R.C.M. 1947, 37-308(part).

Part 23
County Contracts

Part Cross-References

Procurement of architectural, engineering, and land surveying services by governmental entities, Title 18, ch. 8, part 2.

7-5-2301. Competitive, advertised bidding required for certain large purchases or construction contracts. (1) Except as provided in 7-5-2304, a contract for the purchase of any vehicle, road machinery or other machinery, apparatus, appliances, equipment, or materials or supplies in excess of $20,000 or for the construction of any building, road, or bridge in excess of $25,000 or for the repair or maintenance of any building, road, or bridge in excess of $45,000 may not be entered into by a county governing body without first publishing a notice calling for bids.

(2) The notice must be published as provided in 7-1-2121.

(3) Every contract subject to bidding must be let to the lowest and best responsible bidder.

History: En. Sec. 1, Ch. 8, L. 1933; amd. Sec. 1, Ch. 87, L. 1935; re-en. Sec. 4605.1, R.C.M. 1935; amd. Sec. 1, Ch. 42, L. 1941; amd. Sec. 1, Ch. 128, L. 1951; amd. Sec. 1, Ch. 25, L. 1963; amd. Sec. 1, Ch. 331, L. 1969; amd. Sec. 1, Ch. 127, L. 1973; amd. Sec. 1, Ch.

55, L. 1975; R.C.M. 1947, 16-1803(part); amd. Sec. 1, Ch. 134, L. 1981; amd. Sec. 6, Ch. 349, L. 1985; amd. Sec. 1, Ch. 98, L. 1991.

7-5-2302. Use of competitive, nonadvertised bidding for certain purchases. (1) Except as provided in 7-5-2303, a county governing body may enter a contract for the purchase of any vehicle, road machinery or other machinery, apparatus, appliances, equipment, or materials or supplies in excess of $20,000 but less than $50,000 if bids are solicited without advertising from persons, firms, or corporations who have filed with the governing body of the county a request in writing that its name be listed with the governing body for solicitations on the particular items set forth in the request. The governing body shall solicit bids from listed prospective suppliers. The solicitation must contain the same information required to be set forth in advertisements. If a person, firm, or corporation whose name is listed fails for a period of 1 year to respond to any solicitation for bids, the listing may be canceled.

(2) The governing body of the county shall let a contract to the lowest and best responsible bidder.

(3) Compliance with the provisions of this section is considered as meeting the requirements of 7-5-2301.

History: En. Sec. 1, Ch. 8, L. 1933; amd. Sec. 1, Ch. 87, L. 1935; re-en. Sec. 4605.1, R.C.M. 1935; amd. Sec. 1, Ch. 42, L. 1941; amd. Sec. 1, Ch. 128, L. 1951; amd. Sec. 1, Ch. 25, L. 1963; amd. Sec. 1, Ch. 331, L. 1969; amd. Sec. 1, Ch. 127, L. 1973; amd. Sec. 1, Ch. 55, L. 1975; R.C.M. 1947, 16-1803(part); amd. Sec. 2, Ch. 134, L. 1981; amd. Sec. 2, Ch. 98, L. 1991.

7-5-2303. Use of public auction to make purchase. (1) In lieu of soliciting bids, the governing body may purchase at public auction any vehicle, road machinery or other machinery, apparatus, appliances, equipment, or materials or supplies for an amount less than $60,000.

(2) Compliance with the provisions of this section is considered as meeting the requirements of 7-5-2301.

History: En. Sec. 1, Ch. 8, L. 1933; amd. Sec. 1, Ch. 87, L. 1935; re-en. Sec. 4605.1, R.C.M. 1935; amd. Sec. 1, Ch. 42, L. 1941; amd. Sec. 1, Ch. 128, L. 1951; amd. Sec. 1, Ch. 25, L. 1963; amd. Sec. 1, Ch. 331, L. 1969; amd. Sec. 1, Ch. 127, L. 1973; amd. Sec. 1, Ch. 55, L. 1975; R.C.M. 1947, 16-1803(part); amd. Sec. 3, Ch. 134, L. 1981; amd. Sec. 3, Ch. 98, L. 1991.

7-5-2304. Exemptions from competitive bidding requirements. The provisions of 7-5-2301 and 7-5-2302 shall not apply to contracts for:

(1) public printing entered into in accordance with the provisions of part 24; and

(2) purchases which, in the opinion of the governing body, are made necessary by fire, flood, explosion, storm, earthquake, other elements, epidemic, riot or insurrection, or for the immediate preservation of order or the public health or for the restoration of a condition of usefulness which has been destroyed by accident, wear, tear, or mischief or for the relief of a stricken community overtaken by calamity.

History: En. Sec. 1, Ch. 8, L. 1933; amd. Sec. 1, Ch. 87, L. 1935; re-en. Sec. 4605.1, R.C.M. 1935; amd. Sec. 1, Ch. 42, L. 1941; amd. Sec. 1, Ch. 128, L. 1951; amd. Sec. 1, Ch. 25, L. 1963; amd. Sec. 1, Ch. 331, L. 1969; amd. Sec. 1, Ch. 127, L. 1973; amd. Sec. 1, Ch. 55, L. 1975; R.C.M. 1947, 16-1803(part).

7-5-2305. Prohibition on division of contracts to circumvent bidding requirements. Whenever any law of this state provides a limitation upon the amount of money that a county can expend upon any public work or construction project without letting such public work or construction project to contract under competitive bidding procedures, a county shall not circumvent such provision by dividing a public work or construction project or quantum of work to be performed thereunder, which by its nature or character is integral to such public work or construction project or serves to accomplish one of the basic purposes or functions thereof, into several contracts or separate work orders or by any similar device.

History: En. Sec. 1, Ch. 153, L. 1971; R.C.M. 1947, 16-1803.1.

7-5-2306. Use of installment purchase contracts. When the amount to be paid as the purchase price for any vehicle or road machinery of any kind, for any other machinery, apparatus, appliance, or equipment, or for any materials or supplies of any kind exceeds $4,000, the county governing body may provide for the payment of the purchase price in installments extending over a period of not more than 10 years, provided that at the time of entering into the agreement for the purchase, there is an unexpended balance of appropriation in the budget for the then-current fiscal year available and sufficient to meet and take care of the portion of the purchase price as is payable during the then-current fiscal year and the budget for each following year in which any portion of the purchase price is to be paid contains an appropriation for the purpose of paying the purchase price.

History: En. Sec. 1, Ch. 8, L. 1933; amd. Sec. 1, Ch. 87, L. 1935; re-en. Sec. 4605.1, R.C.M. 1935; amd. Sec. 1, Ch. 42, L. 1941; amd. Sec. 1, Ch. 128, L. 1951; amd. Sec. 1, Ch. 25, L. 1963; amd. Sec. 1, Ch. 331, L. 1969; amd. Sec. 1, Ch. 127, L. 1973; amd. Sec. 1, Ch. 55, L. 1975; R.C.M. 1947, 16-1803(2); amd. Sec. 1, Ch. 233, L. 1991.

7-5-2307. Treatment of rental-purchase contracts. Every contract entered into for the rental of machinery, equipment, apparatus, appliances, materials, or supplies of any kind which shall provide for payment of rental by the county and that, after a certain fixed amount has been paid as rental, the property shall become the property of the county or any other similar provisions or conditions shall be deemed and construed to be a contract for sale of such property, and all of the provisions of this part shall apply thereto and govern and control the same.

History: En. Sec. 1, Ch. 8, L. 1933; amd. Sec. 1, Ch. 87, L. 1935; re-en. Sec. 4605.1, R.C.M. 1935; amd. Sec. 1, Ch. 42, L. 1941; amd. Sec. 1, Ch. 128, L. 1951; amd. Sec. 1, Ch. 25, L. 1963; amd. Sec. 1, Ch. 331, L. 1969; amd. Sec. 1, Ch. 127, L. 1973; amd. Sec. 1, Ch. 55, L. 1975; R.C.M. 1947, 16-1803(3).

7-5-2308. Department of administration as purchasing agent. The department of administration may serve as a purchasing agent for the county governing body by mutual consent of both parties.

History: En. Sec. 1, Ch. 8, L. 1933; amd. Sec. 1, Ch. 87, L. 1935; re-en. Sec. 4605.1, R.C.M. 1935; amd. Sec. 1, Ch. 42, L. 1941; amd. Sec. 1, Ch. 128, L. 1951; amd. Sec. 1, Ch. 25, L. 1963; amd. Sec. 1, Ch. 331, L. 1969; amd. Sec. 1, Ch. 127, L. 1973; amd. Sec. 1, Ch. 55, L. 1975; R.C.M. 1947, 16-1803(5).

Part 24
County Printing

7-5-2401. Purpose of part. The purpose of this part is to provide:

(1) for the board of county printing to set maximum prices that may be charged for county legal advertising; and

(2) for the purchase of county printed forms and materials.

History: En. Sec. 2, Ch. 280, L. 1967; amd. Sec. 57, Ch. 348, L. 1974; R.C.M. 1947, 16-1226; amd. Sec. 1, Ch. 507, L. 1995.

Compiler's Comments

1995 Amendment: Chapter 507 in (1), before "legal", deleted "printing and"; inserted (2) concerning the purchase of county printed forms and materials; and made minor changes in style.

7-5-2402. Definition. Unless the context requires otherwise, in this part "board" means the board of county printing provided for in 2-15-1811.

History: En. 16-1226.1 by Sec. 58, Ch. 348, L. 1974; R.C.M. 1947, 16-1226.1; amd. Sec. 4, Ch. 274, L. 1981.

7-5-2403. Meetings of board of county printing. The board shall meet when ordered by the governor or requested by a majority of the board members.

History: En. Sec. 5, Ch. 280, L. 1967; amd. Sec. 60, Ch. 348, L. 1974; R.C.M. 1947, 16-1229(1); amd. Sec. 2, Ch. 507, L. 1995.

Compiler's Comments

1995 Amendment: Chapter 507 after "meet" substituted "when ordered by the governor or requested by a majority of the board members" for "annually".

7-5-2404. Establishment of maximum prices. (1) The board shall adopt and publish a schedule of maximum prices to be charged for county legal advertising.

(2) The board shall conduct hearings when required to determine maximum rates for county legal advertising. Notice of the hearing must be mailed to the Montana association of counties and the Montana newspaper association.

(3) The board shall deliver, free of charge, to each board of county commissioners in this state a copy of every schedule of maximum prices adopted by the board within 30 days of its publication, together with a notice of the date fixed by the board when the prices will be effective.

(4) The county commissioners shall require each establishment that prints county legal advertising to verify that:

(a) the legal advertisement was published on the dates ordered by the county and in the style set by the board; and

(b) the price was not in excess of the maximum price set by the board.

(5) The board may not establish maximum prices for printed county forms.

History: En. Sec. 5, Ch. 280, L. 1967; amd. Sec. 60, Ch. 348, L. 1974; R.C.M. 1947, 16-1229(2), (4), (5); amd. Sec. 3, Ch. 507, L. 1995.

Compiler's Comments

1995 Amendment: Chapter 507 in (1), after "county", deleted "printing and" and deleted second sentence that read: "The prices shall be the full prices to be charged and shall include the paper stock specified, completion of all printing and other work, and delivery to the county courthouse"; in (2), at end of first sentence, substituted "legal advertising" for "printing" and in second sentence substituted "Notice of the hearing must be mailed to the Montana association of counties and the Montana newspaper association" for "Notice of intention to hold a hearing shall be published at least 30 days before the date set for the hearing in a newspaper published in Helena, and a copy shall be mailed to each board of county commissioners"; inserted (4) concerning county requirements for establishments printing county legal advertising; and inserted (5) concerning the Board not setting maximum prices for county printed forms.

7-5-2405. Adoption of printing standards. The board shall adopt necessary standards for typeface, type size, type style, and type leading for county legal advertising.

History: En. Sec. 5, Ch. 280, L. 1967; amd. Sec. 60, Ch. 348, L. 1974; R.C.M. 1947, 16-1229(3); amd. Sec. 4, Ch. 507, L. 1995.

Compiler's Comments

1995 Amendment: Chapter 507 substituted "The board shall adopt necessary standards for typeface, type size, type style, and type leading for county legal advertising" for "The board shall adopt necessary standards for sizes, weights, and grades of paper stock, which shall conform to the uniform scale of sizes, weights, and grades used by paper manufacturers, and for sizes and types of printing, ruling, and binding, which shall conform as nearly as possible to the ordinary standards in use in the printing industry. For this purpose, reference may be made to established standards or publications used in this state, and the board may provide for the adoption of a standard list for those items not covered by the prices, regulations, or standards published by the board."

7-5-2406 through 7-5-2410 reserved.

7-5-2411. County printing contract. (1) The county commissioners shall contract for all advertising required by law and all printed forms required by the county. The advertising required by law must be awarded to a newspaper that:

(a) is published in the county;

(b) has general bona fide and paid circulation with the second-class mailing privilege; and

(c) has been published continuously at least once a week in the county for the 12 months preceding the awarding of the contract.

(2) Contracts for printed forms and materials may be awarded on an annual basis or may be awarded for a specific printing job.

(3) (a) The county clerk and recorder shall maintain a list of willing bidders for county printing and shall notify the printing establishments on the list of any call for bids.

(b) A printing establishment must be added to the county clerk and recorder's list when the clerk and recorder receives a written request from the printing establishment.

(c) The county clerk and recorder may delete the name of any printing establishment from the list if it has not submitted a bid during the previous 365 days.

History: En. Sec. 6, Ch. 280, L. 1967; amd. Sec. 1, Ch. 418, L. 1973; amd. Sec. 61, Ch. 348, L. 1974; R.C.M. 1947, 16-1230; amd. Sec. 3, Ch. 364, L. 1979; amd. Sec. 1, Ch. 70, L. 1981; amd. Sec. 1, Ch. 393, L. 1981; amd. Sec. 1, Ch. 152, L. 1985; amd. Sec. 1, Ch. 305, L. 1989; amd. Sec. 5, Ch. 507, L. 1995.

Compiler's Comments

1995 Amendment: Chapter 507 in first sentence of (1), after "all", deleted "the printing for the county, including" and after "county" deleted "at a rate not exceeding that set by the board"; in (2) substituted "Contracts for printed forms and materials may be awarded on an annual basis or may be awarded for a specific printing job" for "(a) The county commissioners may separate the printing contract into two parts, one of which shall provide for the publication of legal advertising only. The legal advertising contract shall be let to a legally qualified newspaper. The other contract shall provide for all printed forms, materials, and supplies required by the county.

(b) The contract for printed forms, materials, and supplies referred to in subsection (2)(a) or subsection (2)(c) shall be let:

(i) to a commercial printing establishment or establishments, as the case may be, which has been in business in the county for at least 1 year and whose competitive bid is not more than 5% higher than that of the lowest responsible commercial printing establishment bidder doing business outside the county; or

(ii) if no establishment qualifies under subsection (2)(b)(i), to the lowest responsible commercial printing establishment bidder.

(c) Contracts for printed forms, materials, and supplies may be awarded on an annual basis or may be awarded for a specific printing job"; in (3) substituted current language concerning the maintenance of a list of bidders for county printing for "A contract may not call for payment by the county of any prices in excess of the maximum fixed by the board of county printing"; deleted (4) that read: "(4) Nothing in this part shall limit or restrict the power of a board of county commissioners to call for competitive bids from persons or firms qualified to bid on county printing under the terms of this part or to let contracts at prices less than the maximum fixed by the board of county printing"; and made minor changes in style.

Cross-References

County contracts — competitive bidding, Title 7, ch. 5, part 23; 7-5-2413.

7-5-2412. Details relating to printing contract. (1) The contract must be let to the printing establishment that in the judgment of the county commissioners is the most suitable for performing the work. The county commissioners shall require a contractor to perform the county printing contract subject to the requirements of Title 18, chapter 1, part 2.

(2) This part may not be construed to compel the acceptance of unsatisfactory work.

(3) The term of a contract for county printing or county legal advertising may not exceed a period of 2 years.

History: En. Sec. 7, Ch. 280, L. 1967; amd. Sec. 2, Ch. 418, L. 1973; R.C.M. 1947, 16-1231(part); amd. Sec. 2, Ch. 152, L. 1985; amd. Sec. 6, Ch. 507, L. 1995.

Compiler's Comments

1995 Amendment: Chapter 507 in (1), in second sentence, substituted "The county commissioners shall require a contractor to perform the county printing contract subject to the requirements of Title 18, chapter 1, part 2" for "The county commissioners shall require of any contractor to do such county printing a good and sufficient deposit in such sum as said commissioners may deem advisable, signed by at least two sufficient sureties and conditioned to the effect that said contractor will faithfully perform all of the conditions of said contract in accordance with this part and the terms of such contract"; in (3) substituted "county printing or county legal advertising" for "printing" and deleted second sentence that read: "Any printing establishments doing business in the county which may receive any contract for printing under this part and which may not be able to execute any part of such contract shall be required to sublet such contract or portion of contract to some printing establishment within the county if such is available and, if not, within the state, which shall do the work under the contract so sublet entirely within the state with Montana labor"; and made minor changes in style.

7-5-2413. Competitive bids required. The board of county commissioners shall call for competitive bids from persons or firms qualified to bid on county printing, or for county legal advertising if there is more than one legally qualified newspaper in the county, under the terms of this part.

History: En. Sec. 8, Ch. 280, L. 1967; amd. Sec. 3, Ch. 418, L. 1973; R.C.M. 1947, 16-1232; amd. Sec. 7, Ch. 507, L. 1995.

Compiler's Comments

1995 Amendment: Chapter 507 after "printing" inserted "or for county legal advertising if there is more than one legally qualified newspaper in the county".

Cross-References

County contracts — competitive bidding, Title 7, ch. 5, part 23.

7-5-2414. Exemption for county fairs. None of the provisions of this part applies to any printing or advertising that may be required in connection with the holding of county fairs and expositions.

History: En. Sec. 9, Ch. 280, L. 1967; amd. Sec. 62, Ch. 348, L. 1974; R.C.M. 1947, 16-1233.

Cross-References

County fairs, Title 7, ch. 21, part 34.

Part 25
Vacation of Plats

Part Cross-References

Entry townsite deeds, Title 70, ch. 28, part 3.

7-5-2501. Vacation of plats in abandoned townsites. (1) When there is filed in the office of the county clerk of any county of this state a plat of any village or townsite or a plat of any vineyard tracts, acreage tracts, suburban tracts, or community tracts and it is desired by the owners of the land to vacate the plat, the county commissioners of the county in which such plat is filed shall, upon petition of the owners of the land described in the plat and upon such conditions as may be reasonable, cancel the plat and shall vacate the lots, streets, alleys, parks, and boulevards, if any, described in the plat. Thereafter the designation of the property shall be by metes and bounds or by legal subdivisions if the circumstances require and the same shall be assessed accordingly. If any post office, store, or other business establishment is located within the platted area, that fact shall not prevent the cancellation and vacating of the plat in accordance with the terms of this section, but in all cases where it is necessary to designate the location of any such post office, store, or other business property by metes and bounds for purposes of identification, this designation shall be made in the order to be entered by the board of county commissioners.

(2) Petitions under the terms of this section shall be signed by all the owners of the land in the platted area, shall distinctly refer to the original plat for purposes of identification, and shall disclose that the petitioners are the owners of all the lands described in the plat and that no rights of any person have intervened since the filing of the plat which would be adversely affected by the cancellation and annulment thereof.

History: En. Sec. 1, Ch. 6, L. 1907; Sec. 3548, Rev. C. 1907; re-en. Sec. 5308, R.C.M. 1921; amd. Sec. 1, Ch. 54, L. 1929; amd. Sec. 1, Ch. 117, L. 1935; re-en. Sec. 5308, R.C.M. 1935; amd. Sec. 1, Ch. 70, L. 1951; amd. Sec. 1, Ch. 27, L. 1955; R.C.M. 1947, 11-2803(part); amd. Sec. 3, Ch. 311, L. 1979.

Cross-References

Montana Subdivision and Platting Act, Title 76, ch. 3.

7-5-2502. Vacation of portion of village or townsite. (1) When only a portion of any village or townsite in any unincorporated village or town is sought to be vacated or excluded therefrom and said portion is not less than three blocks in area and is situated at the limits or boundaries of said village or townsite, a verified petition may be filed in the office of the clerk of the district court of the county where said village or townsite is situated by the owner or owners of all the property sought to be vacated or excluded. The petition shall be addressed to the district court of the county, setting forth the description of the portion sought to be excluded and the reason or reasons for desiring such portion to be excluded. A citation shall thereupon be issued by the judge of the court before whom said matter is pending, citing all persons interested in said matter to appear before said court at a time and place specified in said citation, but at a time not less than 3 weeks from the date of said citation. The citation shall be published in a newspaper of regular circulation in the county or, if no such newspaper is in said county, then in such a newspaper located in an adjoining county of the state. The citation shall be published once a week for 2 successive weeks before the date of said hearing.

(2) Upon the hearing of said petition and upon conditions that may seem reasonable, the court may vacate and exclude the portion of said village or townsite as prayed for in said petition, including any streets, alleys, parks, or boulevards upon which no public easement or easements shall vest. Such excluded property shall be described by metes and bounds in the decree of the court, and said property shall be assessed accordingly.

History: En. Sec. 1, Ch. 6, L. 1907; Sec. 3548, Rev. C. 1907; re-en. Sec. 5308, R.C.M. 1921; amd. Sec. 1, Ch. 54, L. 1929; amd. Sec. 1, Ch. 117, L. 1935; re-en. Sec. 5308, R.C.M. 1935; amd. Sec. 1, Ch. 70, L. 1951; amd. Sec. 1, Ch. 27, L. 1955; R.C.M. 1947, 11-2803(part).

7-5-2503. Action by city council required to validate vacation by county commissioners. The action of the county commissioners prior to February 3, 1943, vacating any streets, avenues, alleys, parks, or boulevards within the corporate limits of any incorporated city or town the vacating of which at the time of the action of the county commissioners required action by any city council, shall not be effective for the purpose of vacating any such streets, avenues, alleys, parks, or boulevards unless or until the same are vacated by such city council.

History: En. Sec. 1, Ch. 13, L. 1943; R.C.M. 1947, 11-2804(part).

7-5-2504. Vacation of public sites in unincorporated places. Whenever a petition signed by freeholders owning at least two-thirds of the property fronting on any street of any unincorporated townsite in this state shall be presented to the board of county commissioners of the county in which such townsite is situated praying said board to vacate any park, boulevard, or other public place bordering on said street and the adjoining property and not used for road or highway purposes, which park, boulevard, or public place has been dedicated to public use, such board shall hear said petition, and if in its judgment it appears to be for the best interests of the public that such petition be granted, it shall, by order of the board duly entered upon its minutes, declare such park, boulevard, or public place vacated. Thereupon the land included therein shall attach to and become part of the adjoining lots of said townsite, and the title thereto shall pass with conveyance of said lots.

History: En. Sec. 1, Ch. 60, L. 1907; Sec. 3549, Rev. C. 1907; re-en. Sec. 5309, R.C.M. 1921; re-en. Sec. 5309, R.C.M. 1935; R.C.M. 1947, 11-2805.

Parts 26 through 40 reserved

Part 41

Conduct of Municipal Government

Part Cross-References

Business improvement districts, Title 7, ch. 12, part 11.

7-5-4101. General powers of municipal council. The city or town council has power to make and pass all bylaws, ordinances, orders, and resolutions not repugnant to the constitution of the United States or of the state of Montana or to the provisions of this title, necessary for the government or management of the affairs of a city or town, for the execution of the powers vested in the body corporate, and for carrying into effect the provisions of this title.

History: En. Sec. 325, 5th Div. Comp. Stat. 1887; amd. Secs. 3, 4, and 5, p. 179, L. 1889; amd. Sec. 1, p. 113, L. 1893; amd. Sec. 4800, Pol. C. 1895; amd. Sec. 1, p. 203, L. 1897; re-en. Sec. 3259, Rev. C. 1907; re-en. Subd. 1, Sec. 5039, R.C.M. 1921; Cal. Pol. C. Sec. 4408; amd. Sec. 1, Ch. 115, L. 1925; amd. Sec. 1, Ch. 20, L. 1927; re-en. Sec. 5039, R.C.M. 1935; R.C.M. 1947, 11-901.

Cross-References

Nature of municipality, 7-1-4101.

Legislative powers of municipality, 7-1-4123.

Restriction on local government regulation of firearms, 45-8-351.

7-5-4102. Powers and duties of mayor related to administration and executive function. (1) The mayor has power to:

(a) communicate to the council, at the beginning of every session and more often if considered necessary, a statement of the affairs of the city or town, with such recommendations as the mayor considers proper;

(b) recommend to the council such measures connected with the public health, cleanliness, and ornament of the city or town and the improvement of the government and finances as the mayor considers expedient;

(c) call special meetings of the council;

(d) cause to be presented, once in 3 months, a full statement of the financial condition of the city or town;

(e) bid for the city or town on any property sold at a tax or judicial sale whenever the city or town is an interested party;

(f) procure and have in his custody the seal of the city or town;

(g) take and administer oaths;

(h) perform such other duties as may be prescribed by law or by resolution or ordinance of the council.

(2) The mayor is the presiding officer of the council and must sign the journals thereof and all warrants on the city treasury and decide all ties by his vote. The mayor has no other vote.

History: (1)En. Sec. 367, 5th Div. Comp. Stat. 1887; amd. Sec. 13, p. 126, L. 1893; amd. Sec. 4781, Pol. C. 1895; re-en. Sec. 3250, Rev. C. 1907; re-en. Sec. 5030, R.C.M. 1921; Cal. Pol. C. Sec. 4386; re-en. Sec. 5030, R.C.M. 1935; amd. Sec. 1, Ch. 535, L. 1975; Sec. 11-802, R.C.M. 1947; (2)En. Sec. 4782, Pol. C. 1895; re-en. Sec. 3251, Rev. C. 1907; re-en. Sec. 5031, R.C.M. 1921; re-en. Sec. 5031, R.C.M. 1935; Sec. 11-803, R.C.M. 1947; R.C.M. 1947, 11-802(part), 11-803; amd. Sec. 4, Ch. 311, L. 1979.

Cross-References

Distribution of municipal powers, 7-1-4122.

7-5-4103. Council rules and discipline. The council may determine the rules of its proceedings, punish its members for improper conduct, and expel any member for the same by a two-thirds vote of the members elected.

History: En. Sec. 4802, Pol. C. 1895; re-en. Sec. 3262, Rev. C. 1907; re-en. Sec. 5053, R.C.M. 1921; Cal. Pol. C. Sec. 4407; re-en. Sec. 5053, R.C.M. 1935; R.C.M. 1947, 11-1013(part).

7-5-4104. Control of nuisances — exception. (1) The city or town council has power to:

(a) define and abate nuisances and impose fines upon persons guilty of creating, continuing, or suffering a nuisance to exist on the premises which they occupy or control;

(b) regulate and prohibit the wearing of hats or bonnets at theaters or public places of amusement.

(2) The city or town council may not prohibit the placing of a "notice of violation" card on a motor vehicle illegally parked in a disability parking space.

History: En. Subds. 33, 81, Sec. 5039, R.C.M. 1921; amd. Sec. 1, Ch. 115, L. 1925; amd. Sec. 1, Ch. 20, L. 1927; re-en. Secs. 5039.32, 5039.80, R.C.M. 1935; R.C.M. 1947, 11-935, 11-983; amd. Sec. 2, Ch. 406, L. 1993.

Cross-References

Nuisances, Title 27, ch. 30.

7-5-4105. Repealed. Sec. 1, Ch. 26, L. 1987.

History: En. Sec. 5036, Pol. C. 1895; re-en. Sec. 3485, Rev. C. 1907; re-en. Sec. 5086, R.C.M. 1921; Cal. Pol. C. Sec. 4452; re-en. Sec. 5086, R.C.M. 1935; R.C.M. 1947, 11-1503.

7-5-4106. Power of condemnation. The city or town council has power to condemn private property for opening, establishing, widening, or altering any street, alley, park, sewer, or waterway in the city or town and for establishing, constructing, and maintaining any sewer, waterway, or drain ditch outside of the corporate limits of the municipality or for any other municipal and public use. The ordinance authorizing the taking of private property for any such use is conclusive as to the necessity of the taking and must conform to and the proceedings thereunder had as provided in Title 70, chapters 30 and 31, concerning eminent domain.

History: En. Subd. 75, Sec. 5039, R.C.M. 1921; amd. Sec. 1, Ch. 115, L. 1925; amd. Sec. 1, Ch. 20, L. 1927; re-en. Sec. 5039.74, R.C.M. 1935; R.C.M. 1947, 11-977.

Cross-References

Eminent domain, Art. II, sec. 29, Mont. Const.

7-5-4107. Municipal census. The city or town council has power to take a census of the inhabitants of a city or town at any time.

History: En. Subd. 77, Sec. 5039, R.C.M. 1921; amd. Sec. 1, Ch. 115, L. 1925; amd. Sec. 1, Ch. 20, L. 1927; re-en. Sec. 5039.76, R.C.M. 1935; R.C.M. 1947, 11-979.

7-5-4108. Municipal printing contract. The city or town council has power to provide for the city or town printing. The contract for city or town printing must be let annually to the lowest bidder.

History: En. Subd. 78, Sec. 5039, R.C.M. 1921; amd. Sec. 1, Ch. 115, L. 1925; amd. Sec. 1, Ch. 20, L. 1927; re-en. Sec. 5039.77, R.C.M. 1935; R.C.M. 1947, 11-980.

7-5-4109. Control of conflict of interest. (1) The mayor, any member of the council, any city or town officer, or any relative or employee of an enumerated officer may not be directly or indirectly interested in the profits of any contract entered into by the council while the officer is or was in office.

(2) The governing body of a city or town may waive the application of the prohibition contained in subsection (1) for a city or town officer or employee, or to the relative of an officer or employee, if in an official capacity the officer or employee does not influence the decisionmaking process or supervise a function regarding the contract in question. A governing body may grant a waiver under this subsection only after publicly disclosing the nature of the conflict at an advertised public hearing held for that purpose. In determining whether to grant a waiver, the governing body shall consider the following factors, where applicable:

(a) whether the waiver would provide to a program or project a significant benefit or an essential skill or expertise that would otherwise not be available;

(b) whether an opportunity was provided for open competitive bidding or negotiation;

(c) whether the person affected is a member of a clearly identified group of persons that is the intended beneficiary of the program or project involved in the contract; and

(d) whether the hardship imposed on the affected person or the governmental entity by prohibiting the conflict will outweigh the public interest served by avoiding the conflict.

History: En. Sec. 345, 5th Div. Comp. Stat. 1887; amd. Sec. 4806, Pol. C. 1895; re-en. Sec. 3277, Rev. C. 1907; re-en. Sec. 5069, R.C.M. 1921; re-en. Sec. 5069, R.C.M. 1935; R.C.M. 1947, 11-1201; amd. Sec. 2, Ch. 322, L. 1993.

Cross-References

Governmental standards of conduct, Title 2, ch. 2.

Official misconduct, 45-7-401.

7-5-4110. Compensation and duties of city employees. The city or town council has power to fix the compensation and to prescribe the duties of all employees of the city or town, subject to the limitations mentioned in this code.

History: En. Subd. 47, Sec. 5039, R.C.M. 1921; amd. Sec. 1, Ch. 115, L. 1925; amd. Sec. 1, Ch. 20, L. 1927; re-en. Sec. 5039.46, R.C.M. 1935; R.C.M. 1947, 11-949(part).

Cross-References

Veterans' public employment preference, Title 39, ch. 29.

Handicapped persons' public employment preference, Title 39, ch. 30.

7-5-4111. City work week. All full-time salaried city employees shall work a minimum of 40 hours per week.

History: En. Sec. 1134, Pol. C. 1895; re-en. Sec. 436, Rev. C. 1907; re-en. Sec. 453, R.C.M. 1921; Cal. Pol C. Sec. 1030; amd. Sec. 1, Ch. 5, L. 1931; re-en. Sec. 453, R.C.M. 1935; amd. Sec. 1, Ch. 22, L. 1951; amd. Sec. 1, Ch. 253, L. 1957; amd. Sec. 1, Ch. 2, L. 1961; amd. Sec. 1, Ch. 33, L. 1961; R.C.M. 1947, 59-510(2)(part).

Cross-References

Eight-hour workday, Art. XII, sec. 2, Mont. Const.

Police officers — 8-hour day, 7-32-4116.

Firefighters — hours of work — first- and second-class cities, 7-33-4128.

Workday for local government employees, 39-4-107.

7-5-4112. Reports from municipal officers. The city or town council has power to require from an officer at any time a report in detail of the transactions in his office or any matter connected therewith.

History: En. Subd. 60, Sec. 5039, R.C.M. 1921; amd. Sec. 1, Ch. 115, L. 1925; amd. Sec. 1, Ch. 20, L. 1927; re-en. Sec. 5039.59, R.C.M. 1935; R.C.M. 1947, 11-962.

7-5-4113 through 7-5-4120 reserved.

7-5-4121. Conduct of council business. (1) A majority of the members of the council constitute a quorum for the transaction of business, but a less number may meet and adjourn to any time stated and may compel the attendance of absent members, under such rules and penalties as the council may prescribe.

(2) The ayes and noes must be called and recorded on the final passage of any ordinance, bylaw, or resolution or the making of any contract. The voting on the election or appointment of any officer must be viva voce. A majority of the whole number of the members elected is requisite to appoint or elect an officer, and such vote must be recorded.

History: (1)En. Sec. 4801, Pol. C. 1895; re-en. Sec. 3261, Rev. C. 1907; re-en. Sec. 5052, R.C.M. 1921, Cal. Pol. C. Sec. 4406; re-en. Sec. 5052, R.C.M. 1935; Sec. 11-1012, R.C.M 1947; (2)En. Secs. 333-337-347, 5th Div. Comp. Stat. 1887; amd. Secs. 2 and 6, pp. 122, 126, L. 1893; amd. Sec. 4803, Pol. C. 1895; re-en. Sec. 3263, Rev. C. 1907; re-en. Sec. 5054, R.C.M. 1921; re-en. Sec. 5054, R.C.M. 1935; Sec. 11-1014, R.C.M. 1947; R.C.M. 1947, 11-1012, 11-1014.

7-5-4122. Special meetings of council. When a special meeting of the council is called under 7-5-4102(1)(c), the mayor must state by message the object of the meeting, and the business of the meeting must be restricted to the object stated.

History: En. Sec. 367, 5th Div. Comp. Stat. 1887; amd. Sec. 13, p. 126, L. 1893; amd. Sec. 4781, Pol. C. 1895; re-en. Sec. 3250, Rev. C. 1907; re-en. Sec. 5030, R.C.M. 1921; Cal. Pol. C. Sec. 4386; re-en. Sec. 5030, R.C.M. 1935; amd. Sec. 1, Ch. 535, L. 1975; R.C.M. 1947, 11-802(part).

7-5-4123. Journal of council proceedings. The council must cause a journal of the proceedings to be kept, which must be open to inspection.

History: En. Sec. 4802, Pol. C. 1895; re-en. Sec. 3262, Rev. C. 1907; re-en. Sec. 5053, R.C.M. 1921; Cal. Pol. C. Sec. 4407; re-en. Sec. 5053, R.C.M. 1935; R.C.M. 1947, 11-1013(part).

7-5-4124. Destruction of municipal records. Upon the order of the city or town council or commission and with the written approval of the local government records destruction subcommittee provided for in 2-6-403, a city or town officer may destroy records that have met the retention period, as contained in the local government records retention and disposition schedules, and that are no longer needed by the office.

History: (1), (2)En. Sec. 3, Ch. 92, L. 1935; re-en. Sec. 455.3, R.C.M. 1935; amd. Sec. 1, Ch. 65, L. 1974; amd. Sec. 80, Ch. 348, L. 1974; amd. Sec. 37, Ch. 213, L. 1975; Sec. 59-515, R.C.M. 1947; (3)En. Sec. 4, Ch. 92, L. 1935; re-en. Sec. 455.4, R.C.M. 1935; amd. Sec. 12, Ch. 189, L. 1953; amd. Sec. 1, Ch. 90, L. 1963; amd. Sec. 1, Ch. 95, L. 1967; Sec. 59-516, R.C.M. 1947; R.C.M. 1947, 59-515, 59-516(part); amd. Sec. 1, Ch. 217, L. 1981; amd. Sec. 7, Ch. 274, L. 1981; amd. Sec. 1, Ch. 287, L. 1983; amd. Sec. 2, Ch. 430, L. 1985; amd. Sec. 14, Ch. 420, L. 1993.

7-5-4125 through 7-5-4140 reserved.

7-5-4141. Membership in organizations of municipal officers. (1) The governing body of a city or town may pay:

(a) the membership fees and dues in any organization of city and town officials when the purpose of the organization is improvement of laws relating to city and town government and their better and more economical administration; and

(b) the necessary expenses of any regular officer or employee of the city or town in attending any convention or meeting of such organization upon the direction of the governing body by order upon its minutes, stating that the public interest requires such attendance.

(2) The payment of membership fees, dues, and/or expenses is to be made from such fund of the city or town as the governing body shall direct in the order, with the claim presented, audited, and allowed as are other claims against the city or town.

History: En. Sec. 1, Ch. 241, L. 1921; re-en. Sec. 443, R.C.M. 1921; amd. Sec. 1, Ch. 124, L. 1923; amd. Sec. 1, Ch. 48, L. 1927; amd. Sec. 1, Ch. 86, L. 1931; amd. Sec. 1, Ch. 130, L. 1933; re-en. Sec. 443, R.C.M. 1935; amd. Sec. 1, Ch. 119, L. 1943; amd. Sec. 1, Ch. 58, L. 1949; amd. Sec. 1, Ch. 184, L. 1957; amd. Sec. 11, Ch. 80, L. 1961; amd. Sec. 1, Ch. 85, L. 1963; amd. Sec. 1, Ch. 79, L. 1965; amd. Sec. 1, Ch. 66, L. 1967; amd. Sec. 1, Ch. 174, L. 1967; amd. Sec. 1, Ch. 182, L. 1973; R.C.M. 1947, 25-508(3); amd. Sec. 5, Ch. 311, L. 1979.

7-5-4142. Attendance at meetings and conventions by municipal officers and employees. Unless otherwise provided by law, no city officer or employee may receive payment from any public funds for traveling expenses or other expenses of any sort for attendance at any convention, meeting, or other gathering of public officers except for attendance upon such convention, meeting, or other gathering as the officer or employee may by virtue of his office find it necessary to attend.

History: En. Sec. 1, Ch. 241, L. 1921; re-en. Sec. 443, R.C.M. 1921; amd. Sec. 1, Ch. 124, L. 1923; amd. Sec. 1, Ch. 48, L. 1927; amd. Sec. 1, Ch. 86, L. 1931; amd. Sec. 1, Ch. 130, L. 1933; re-en. Sec. 443, R.C.M. 1935; amd. Sec. 1, Ch. 119, L. 1943; amd. Sec. 1, Ch. 58, L. 1949; amd. Sec. 1, Ch. 184, L. 1957; amd. Sec. 11, Ch. 80, L. 1961; amd. Sec. 1, Ch. 85, L. 1963; amd. Sec. 1, Ch. 79, L. 1965; amd. Sec. 1, Ch. 66, L. 1967; amd. Sec. 1, Ch. 174, L. 1967; amd. Sec. 1, Ch. 182, L. 1973; R.C.M. 1947, 25-508(part); amd. Sec. 6, Ch. 311, L. 1979.

Part 42

Municipal Ordinances and Resolutions

Part Cross-References

Restriction on local government regulation of firearms, 45-8-351.

7-5-4201. Municipal ordinances. (1) The style of ordinances may be as follows: "Be it ordained by the council of the city of .... (or town of ....)", and all ordinances may be published or posted as prescribed by the council.

(2) All ordinances, bylaws, and resolutions must be passed by the council and approved by the mayor or the person acting in his stead and must be recorded in a book kept by the clerk, called "The Ordinance Book", and numbered by numerical decimal system in the order in which they are passed or codified.

(3) No ordinance shall be passed containing more than one subject, which shall be clearly expressed in its title, except ordinances for the codification and revision of ordinances.

History: (1)En. Sec. 4804, Pol. C. 1895; re-en. Sec. 3264, Rev. C. 1907; re-en. Sec. 5055, R.C.M. 1921; re-en. Sec. 5055, R.C.M. 1935; Sec. 11-1101, R.C.M. 1947; (2), (3)En. Sec. 4805, Pol. C. 1895; re-en. Sec. 3265, Rev. C. 1907; re-en. Sec. 5056, R.C.M. 1921; re-en. Sec. 5056, R.C.M. 1935; amd. Sec. 1, Ch. 38, L. 1967; amd. Sec. 1, Ch. 231, L. 1969; amd. Sec. 1, Ch. 111, L. 1975; Sec. 11-1102, R.C.M. 1947; R.C.M. 1947, 11-1101, 11-1102(part).

7-5-4202. Incorporation of technical codes by reference. (1) The governing body of an incorporated city or town may adopt technical building, zoning, health, electrical, fire, and plumbing codes in whole or in part by reference.

(2) At least 15 days prior to final action by a governing body of the city or town, notice of intent to adopt a technical code in whole or in part by reference shall be published in a newspaper of general circulation in the city or town. A copy of the code or part to be adopted shall be filed with the clerk of the city or town for inspection by the public.

(3) If a technical code or part of a code is adopted by reference, a record in "The Ordinance Book" may be made by recording the ordinance without setting forth the provisions of the code or part of a code adopted.

History: En. Sec. 4805, Pol. C. 1895; re-en. Sec. 3265, Rev. C. 1907; re-en. Sec. 5056, R.C.M. 1921; re-en. Sec. 5056, R.C.M. 1935; amd. Sec. 1, Ch. 38, L. 1967; amd. Sec. 1, Ch. 231, L. 1969; amd. Sec. 1, Ch. 111, L. 1975; R.C.M. 1947, 11-1102(2), (3); amd. Sec. 1, Ch. 113, L. 1987.

7-5-4203. Effective date of ordinances and resolutions. (1) An ordinance passed by the council of any city or town may not become effective until 30 days after its passage except:

(a) general appropriation ordinances providing for the ordinary and current expenses of the city or town; and

(b) emergency measures.

(2) A resolution is immediately effective unless a delayed effective date is specified in the resolution.

History: En. Ch. 167, L. 1907; Sec. 3268, Rev. C. 1907; re-en. Sec. 5060, R.C.M. 1921; re-en. Sec. 5060, R.C.M. 1935; R.C.M. 1947, 11-1106(part); amd. Sec. 7, Ch. 311, L. 1979; amd. Sec. 2, Ch. 309, L. 1993.

7-5-4204. Details relating to emergency measures. In the case of emergency measures, the emergency must be expressed in the preamble or in the body of the measure and the measure must receive a two-thirds vote of all the members elected. In emergency ordinances, the resolutions shall include only such measures as are immediately necessary for the preservation of peace, health, and safety and shall not include:

(1) a franchise or license to a corporation or individual;

(2) any provisions for the sale of real estate;

(3) any lease or letting of any property for a period exceeding 1 year; or

(4) the purchase or sale of personal property exceeding $5,000 in value.

History: En. Ch. 167, L. 1907; Sec. 3268, Rev. C. 1907; re-en. Sec. 5060, R.C.M. 1921; re-en. Sec. 5060, R.C.M. 1935; R.C.M. 1947, 11-1106(part).

7-5-4205. Powers of mayor related to ordinances and resolutions. The mayor has power to:

(1) cause the ordinances of the city or town to be executed;

(2) approve all ordinances and resolutions of the council adopted by it;

(3) veto any objectionable part of a resolution or ordinance and approve the other parts.

History: En. Sec. 367, 5th Div. Comp. Stat. 1887; amd. Sec. 13, p. 126, L. 1893; amd. Sec. 4781, Pol. C. 1895; re-en. Sec. 3250, Rev. C. 1907; re-en. Sec. 5030, R.C.M. 1921; Cal. Pol. C. Sec. 4386; re-en. Sec. 5030, R.C.M. 1935; amd. Sec. 1, Ch. 535, L. 1975; R.C.M. 1947, 11-802(part).

7-5-4206. Procedure to veto ordinance or resolution. (1) In case an ordinance or resolution does not meet the mayor's approbation, the mayor has power to return the same to the next regular meeting of the council, with all objections in writing. No ordinance or resolution so vetoed by the mayor must go into effect unless the same be afterwards passed by two-thirds vote of the whole number of members of the council.

(2) If the mayor fails to return any resolution or ordinance as aforesaid, the same takes effect without further action.

History: En. Sec. 367, 5th Div. Comp. Stat. 1887; amd. Sec. 13, p. 126, L. 1893; amd. Sec. 4781, Pol. C. 1895; re-en. Sec. 3250, Rev. C. 1907; re-en. Sec. 5030, R.C.M. 1921; Cal. Pol. C. Sec. 4386; re-en. Sec. 5030, R.C.M. 1935; amd. Sec. 1, Ch. 535, L. 1975; R.C.M. 1947, 11-802(part).

7-5-4207. Penalties for violation of municipal ordinances. (1) Except as provided in subsection (2), the city or town council may impose fines and penalties for the violation of any city ordinance, but a fine or penalty may not exceed $500 and imprisonment may not exceed 6 months for any one offense.

(2) A local government may fix penalties for the violation of an ordinance relating to local or federal wastewater pretreatment standards implementing the Federal Water Pollution Control Act, 33 U.S.C. 1251 through 1387, if the penalties do not exceed $1,000 per day for each violation or 6 months' imprisonment, or both.

History: En. Subd. 48, Sec. 5039, R.C.M. 1921; amd. Sec. 1, Ch. 115, L. 1925; amd. Sec. 1, Ch. 20, L. 1927; re-en. Sec. 5039.47, R.C.M. 1935; amd. Sec. 1, Ch. 202, L. 1974; R.C.M. 1947, 11-950; amd. Sec. 2, Ch. 597, L. 1993.

7-5-4208. Applicability of part. (1) Except as provided in subsection (2), the provisions of this part govern the adoption procedures and effect of municipal ordinances and resolutions.

(2) The following provisions apply to adoption procedures and effect of municipal ordinances and resolutions, notwithstanding the provisions of this part:

(a) Provisions of law not within Title 7, chapter 5, parts 1 and 42, that set forth different procedures for the adoption of an ordinance or resolution relating to specific situations govern the adoption rather than the general provisions of this part or part 1 of this chapter.

(b) Sections of Title 7, chapter 5, part 1, that are in conflict with the provisions of this part may be adopted by a municipality by ordinance to govern the adoption of ordinances and resolutions and the effects of such ordinances and resolutions as a substitute for the applicable sections of this part.

(c) Sections of Title 7, chapter 5, part 1, that address procedures or effects which are neither addressed by this part nor in conflict with any provision of this part apply to municipal ordinances and resolutions.

History: En. Sec. 1, Ch. 315, L. 1981; amd. Sec. 7, Ch. 220, L. 1985.

7-5-4209 and 7-5-4210 reserved.

7-5-4211 through 7-5-4225. Repealed. Sec. 407, Ch. 571, L. 1979.

Compiler's Comments

Histories of Repealed Sections:

7-5-4211 through 7-5-4216. En. Ch. 167, L. 1907; Sec. 3266, Rev. C. 1907; re-en. Sec. 5058, R.C.M. 1921; re-en. Sec. 5058, R.C.M. 1935; amd. Sec. 1, Ch. 24, L. 1951; amd. Sec. 1, Ch. 126, L. 1967; R.C.M. 1947, 11-1104.

7-5-4217. (1)En. Ch. 167, L. 1907; Sec. 3269, Rev. C. 1907; re-en. Sec. 5061, R.C.M. 1921; re-en. Sec. 5061, R.C.M. 1935; amd. Sec. 1, Ch. 94, L. 1967; Sec. 11-1107, R.C.M. 1947; (2)En. Ch. 167, L. 1907; Sec. 3276, Rev. C. 1907; re-en. Sec. 5068, R.C.M. 1921; re-en. Sec. 5068, R.C.M. 1935; Sec. 11-1114, R.C.M. 1947; R.C.M. 1947, 11-1107, 11-1114.

7-5-4218. En. Ch. 167, L. 1907; Sec. 3275, Rev. C. 1907; re-en. Sec. 5067, R.C.M. 1921; re-en. Sec. 5067, R.C.M. 1935; R.C.M. 1947, 11-1113.

7-5-4219. En. Ch. 167, L. 1907; Sec. 3274, Rev. C. 1907; re-en. Sec. 5066, R.C.M. 1921; re-en. Sec. 5066, R.C.M. 1935; R.C.M. 1947, 11-1112(part).

7-5-4220. En. Ch. 167, L. 1907; Secs. 3267, 3270, 3271, Rev. C. 1907; re-en. Secs. 5059, 5062, 5063, R.C.M. 1921; re-en. Secs. 5059, 5062, 5063, R.C.M. 1935; R.C.M. 1947, 11-1105, 11-1108, 11-1109.

7-5-4221. En. Ch. 167, L. 1907; Sec. 3272, Rev. C. 1907; re-en. Sec. 5064, R.C.M. 1921; re-en. Sec. 5064, R.C.M. 1935; R.C.M. 1947, 11-1110.

7-5-4222. En. Ch. 167, L. 1907; Sec. 3273, Rev. C. 1907; re-en. Sec. 5065, R.C.M. 1921; re-en. Sec. 5065, R.C.M. 1935; R.C.M. 1947, 11-1111(part).

7-5-4223. En. Ch. 167, L. 1907; Sec. 3274, Rev. C. 1907; re-en. Sec. 5066, R.C.M. 1921; re-en. Sec. 5066, R.C.M. 1935; R.C.M. 1947, 11-1112(part).

7-5-4224 and 7-5-4225. En. Ch. 167, L. 1907; Sec. 3273, Rev. C. 1907; re-en. Sec. 5065, R.C.M. 1921; re-en. Sec. 5065, R.C.M. 1935; R.C.M. 1947, 11-1111(part).

Part 43

Municipal Contracts and Franchises

7-5-4301. Power to enter and execute contracts. (1) The city or town council has power to make any and all contracts necessary to carry into effect the powers granted by this code and to provide for the manner of executing the same.

(2) (a) All necessary contracts for professional, technical, engineering, and legal services are excluded from the provisions of 7-5-4302 through 7-5-4304, 7-5-4306, and 7-5-4307. Provided, however, contracts wherein the value of the majority of the services to be rendered constitute services other than professional, technical, engineering, and legal services must be awarded under the bidding procedure provided for in 7-5-4302 through 7-5-4304, 7-5-4306, and 7-5-4307.

(b) Supervision over or operation of a physical plant that provides water, sewer, or power services to a municipality does not constitute a service excluded under the provisions of subsection (2)(a).

History: (1)En. Subd. 63, Sec. 5039, R.C.M. 1921; amd. Sec. 1, Ch. 115, L. 1925; amd. Sec. 1, Ch. 20, L. 1927; re-en. Sec. 5039.62, R.C.M. 1935; Sec. 11-965, R.C.M. 1947; (2)En. Sec. 1, Ch. 48, L. 1907; Sec. 3278, Rev. C. 1907; re-en. Sec. 5070, R.C.M. 1921; amd. Sec. 1, Ch. 22, L. 1927; re-en. Sec. 5070, R.C.M. 1935; amd. Sec. 1, Ch. 18, L. 1939; amd. Sec. 1, Ch. 59, L. 1941; amd. Sec. 1, Ch. 153, L. 1947; amd. Sec. 1, Ch. 139, L. 1949; amd. Sec. 1, Ch. 220, L. 1959; amd. Sec. 1, Ch. 26, L. 1963; amd. Sec. 1, Ch. 121, L. 1969; amd. Sec. 1, Ch. 371, L. 1971; Sec. 11-1202, R.C.M. 1947; R.C.M. 1947, 11-965, 11-1202(part); amd. Sec. 1, Ch. 542, L. 1983; amd. Sec. 1, Ch. 182, L. 1987.

Cross-References

Procurement of architectural, engineering, and land surveying services by governmental entities, Title 18, ch. 8, part 2.

7-5-4302. Competitive, advertised bidding required for certain purchase and construction contracts. (1) Except as provided in 7-5-4303 or 7-5-4310, all contracts for the purchase of any automobile, truck, other vehicle, road machinery, other machinery, apparatus, appliances, or equipment; for any materials or supplies of any kind in excess of $20,000; or for construction, repair, or maintenance in excess of $25,000 must be let to the lowest responsible bidder after advertisement for bids.

(2) The advertisement must be made in the official newspaper of the city or town if there is an official newspaper, and if not, it must be made in a daily newspaper of general circulation published in the city or town if there is a newspaper. If there is no newspaper, the advertisement must be made by posting in three of the most public places in the city or town. The advertisement, if by publication in a newspaper, must be made once each week for 2 consecutive weeks, and the second publication must be made not less than 5 days or more than 12 days before the consideration of bids. If the advertisement is made by posting, 15 days must elapse, including the day of posting, between the time of the posting of the advertisement and the day set for considering bids.

(3) The council may postpone action on any contract until the next regular meeting after bids are received in response to the advertisement and may reject any bids and readvertise as provided in this section.

History: En. Sec. 1, Ch. 48, L. 1907; Sec. 3278, Rev. C. 1907; re-en. Sec. 5070, R.C.M. 1921; amd. Sec. 1, Ch. 22, L. 1927; re-en. Sec. 5070, R.C.M. 1935; amd. Sec. 1, Ch. 18, L. 1939; amd. Sec. 1, Ch. 59, L. 1941; amd. Sec. 1, Ch. 153, L. 1947; amd. Sec. 1, Ch. 139, L. 1949; amd. Sec. 1, Ch. 220, L. 1959; amd. Sec. 1, Ch. 26, L. 1963; amd. Sec. 1, Ch. 121, L. 1969; amd. Sec. 1, Ch. 371, L. 1971; R.C.M. 1947, 11-1202(part); amd. Sec. 1, Ch. 429, L. 1981; amd. Sec. 1, Ch. 169, L. 1987; amd. Sec. 1, Ch. 475, L. 1993.

7-5-4303. Exemptions from bidding or advertising requirements for certain contracts. (1) The provisions of 7-5-4302 as to advertisement for bids shall not apply upon the happening of any emergency caused by fire, flood, explosion, storm, earthquake, riot, insurrection, or other similar emergency, but in such case the council may proceed in any manner which, in the judgment of three-fourths of the members of the council present at the meeting, duly recorded in the minutes of the proceedings of the council by aye and nay vote, will best meet the emergency and serve the public interest. Such emergency shall be declared and recorded at length in the minutes of the proceedings of the council at the time the vote thereon is taken and recorded.

(2) When there are sufficient funds in the budget for supplies or equipment, a city or town may, without bid, purchase such supplies or equipment from government agencies available to cities or towns when the same can be purchased by such city or town at a substantial saving to such city or town.

History: En. Sec. 1, Ch. 48, L. 1907; Sec. 3278, Rev. C. 1907; re-en. Sec. 5070, R.C.M. 1921; amd. Sec. 1, Ch. 22, L. 1927; re-en. Sec. 5070, R.C.M. 1935; amd. Sec. 1, Ch. 18, L. 1939; amd. Sec. 1, Ch. 59, L. 1941; amd. Sec. 1, Ch. 153, L. 1947; amd. Sec. 1, Ch. 139, L. 1949; amd. Sec. 1, Ch. 220, L. 1959; amd. Sec. 1, Ch. 26, L. 1963; amd. Sec. 1, Ch. 121, L. 1969; amd. Sec. 1, Ch. 371, L. 1971; R.C.M. 1947, 11-1202(part).

Cross-References

Products of prison industries training program, 50-30-131 through 50-30-133.

7-5-4304. Certain contracts to be submitted to voters. No contract may be let pursuant to 7-5-4302 that extends over a period of 5 years or more, except contracts for solid waste management systems as defined in 75-10-103, which may not exceed 10 years, without first submitting the question to a vote of the electors of the city or town.

History: En. Sec. 1, Ch. 48, L. 1907; Sec. 3278, Rev. C. 1907; re-en. Sec. 5070, R.C.M. 1921; amd. Sec. 1, Ch. 22, L. 1927; re-en. Sec. 5070, R.C.M. 1935; amd. Sec. 1, Ch. 18, L. 1939; amd. Sec. 1, Ch. 59, L. 1941; amd. Sec. 1, Ch. 153, L. 1947; amd. Sec. 1, Ch. 139, L. 1949; amd. Sec. 1, Ch. 220, L. 1959; amd. Sec. 1, Ch. 26, L. 1963; amd. Sec. 1, Ch. 121, L. 1969; amd. Sec. 1, Ch. 371, L. 1971; R.C.M. 1947, 11-1202(part); amd. Sec. 8, Ch. 311, L. 1979; amd. Sec. 8, Ch. 220, L. 1985; amd. Sec. 2, Ch. 770, L. 1991.

7-5-4305. Prohibition on division of contracts to circumvent bidding requirements. Whenever any law of this state provides a limitation upon the amount of money that a city or town can expend upon any public work or construction project without letting such public work or construction project to contract under competitive bidding procedures, a city or town shall not circumvent such provision by dividing a public work or construction project or quantum of work to be performed thereunder, which by its nature or character is integral to such public work or construction project or serves to accomplish one of the basic purposes or functions thereof, into several contracts or separate work orders or by any similar device.

History: En. Sec. 1, Ch. 183, L. 1971; R.C.M. 1947, 11-1202.1.

7-5-4306. Use of installment purchase contract. (1) Subject to the requirements of subsection (2), when the amount to be paid under an installment purchase contract exceeds $4,000, the council may provide for the payment of the amount in installments extending over a period of not more than 5 years, provided that at the time of entering into the contract, there is an unexpended balance of appropriation in the budget for the then-current fiscal year available and sufficient to meet and take care of the portion of the contract price payable during the then-current fiscal year. The budget for each following year in which any portion of the purchase price is to be paid must contain an appropriation for the purpose of paying that portion.

(2) When the purchase price is extended over a term of 2 years, at least 40% of the amount must be paid the first year and the remainder the second year. When the amount is extended over a term of 3 years, at least one-third of the amount must be paid each year. If the amount is extended over a term of 4 years, at least one-fourth is to be paid each year. If the amount is extended over a term of 5 years, at least one-fifth is to be paid each year.

History: En. Sec. 1, Ch. 48, L. 1907; Sec. 3278, Rev. C. 1907; re-en. Sec. 5070, R.C.M. 1921; amd. Sec. 1, Ch. 22, L. 1927; re-en. Sec. 5070, R.C.M. 1935; amd. Sec. 1, Ch. 18, L. 1939; amd. Sec. 1, Ch. 59, L. 1941; amd. Sec. 1, Ch. 153, L. 1947; amd. Sec. 1, Ch. 139, L. 1949; amd. Sec. 1, Ch. 220, L. 1959; amd. Sec. 1, Ch. 26, L. 1963; amd. Sec. 1, Ch. 121, L. 1969; amd. Sec. 1, Ch. 371, L. 1971; R.C.M. 1947, 11-1202(part); amd. Sec. 2, Ch. 429, L. 1981; amd. Sec. 2, Ch. 475, L. 1993.

7-5-4307. Sale or trade-in of old supplies or equipment. Old supplies or equipment may be sold by the city or town to the highest responsible bidder after calling for bid purchasers as herein set forth for bid sellers, and such city or town may trade in supplies or old equipment on new supplies or equipment at such bid price as will result in the lowest net price.

History: En. Sec. 1, Ch. 48, L. 1907; Sec. 3278, Rev. C. 1907; re-en. Sec. 5070, R.C.M. 1921; amd. Sec. 1, Ch. 22, L. 1927; re-en. Sec. 5070, R.C.M. 1935; amd. Sec. 1, Ch. 18, L. 1939; amd. Sec. 1, Ch. 59, L. 1941; amd. Sec. 1, Ch. 153, L. 1947; amd. Sec. 1, Ch. 139, L.

1949; amd. Sec. 1, Ch. 220, L. 1959; amd. Sec. 1, Ch. 26, L. 1963; amd. Sec. 1, Ch. 121, L. 1969; amd. Sec. 1, Ch. 371, L. 1971; R.C.M. 1947, 11-1202(part).

7-5-4308. Procedure to modify contract. (1) When it becomes necessary in the prosecution of any work to make alterations or modifications of the specifications or plans of a contract, such alteration or modification must only be made by resolution of the council. Such resolution is of no effect until the price to be paid for the same is agreed to in writing and signed by the contractor and approved by the council.

(2) No contractor must be allowed anything for extra work caused by an alteration or modification unless a resolution is made and an agreement signed as provided in subsection (1). He must not in any case be allowed more for such alteration than the price fixed by such agreement.

History: En. Secs. 4809, 4810, Pol. C. 1895; re-en. Secs. 3280, 3281, Rev. C. 1907; re-en. Secs. 5072, 5073, R.C.M. 1921; re-en. Secs. 5072, 5073, R.C.M. 1935; R.C.M. 1947, 11-1204, 11-1205.

7-5-4309. Repealed. Sec. 1, Ch. 81, L. 1983.

History: En. Sec. 4808, Pol. C. 1895; re-en. Sec. 3279, Rev. C. 1907; re-en. Sec. 5071, R.C.M. 1921; re-en. Sec. 5071, R.C.M. 1935; R.C.M. 1947, 11-1203.

7-5-4310. Use of public auction to make purchase. In lieu of soliciting bids, the council may purchase at public auction any vehicle, machinery, appliances, apparatus, building, or materials and supplies for which must be paid a sum less than $25,000.

History: En. Sec. 2, Ch. 169, L. 1987.

7-5-4311 through 7-5-4320 reserved.

7-5-4321. Grant of exclusive franchise — election required. (1) The council may not grant an exclusive franchise or special privilege to any person except in the manner specified in subsection (2). The powers of the council are only those expressly prescribed by law and those necessarily incident the law.

(2) An exclusive franchise for any purpose, except contracts for solid waste management systems as defined in 75-10-103, which may not exceed 10 years, may not be granted by any city or town or by the mayor or city council to any person, association, or corporation without first submitting the application for an exclusive franchise to the electors of the city at a regular or primary election.

History: (1)En. Sec. 4813, Pol. C. 1895; re-en. Sec. 3290, Rev. C. 1907; amd. Sec. 1, Ch. 29, L. 1921; re-en. Sec. 5074, R.C.M. 1921; re-en. Sec. 5074, R.C.M. 1935; Sec. 11-1206, R.C.M. 1947; (2)En. Sec. 1, Ch. 85, L. 1903; re-en. Sec. 3291, Rev. C. 1907; re-en. Sec. 5075, R.C.M. 1921; re-en. Sec. 5075, R.C.M. 1935; Sec. 11-1207, R.C.M. 1947; R.C.M. 1947, 11-1206, 11-1207; amd. Sec. 9, Ch. 311, L. 1979; amd. Sec. 1, Ch. 283, L. 1981; amd. Sec. 3, Ch. 770, L. 1991; amd. Sec. 26, Ch. 387, L. 1995.

Compiler's Comments

1995 Amendment: Chapter 387 in (2), at end, inserted "at a regular or primary election"; and made minor changes in style.

7-5-4322. Election on question of granting franchise. (1) Notice of the election shall be published as provided in 13-1-108. The notice must state the time and place of holding the election, the character of any such franchise applied for, and the valuable consideration, if there is any, to be derived by the city.

(2) At such election the ballots must contain the words "For granting franchise" and "Against granting franchise", and in voting, the elector must

make a cross (X) opposite the answer he intends to vote for. The election must be conducted and canvassed and the return made in the same manner as other city or town elections.

(3) If the majority of the votes cast at the election are "For granting franchise", the mayor and city council must thereupon grant the same by the passage and approval of a proper ordinance.

History: (1), (2)En. Sec. 2, Ch. 85, L. 1903; re-en. Sec. 3292, Rev. C. 1907; re-en. Sec. 5076, R.C.M. 1921; re-en. Sec. 5076, R.C.M. 1935; Sec. 11-1208, R.C.M. 1947; (3)En. Sec. 3, Ch. 85, L. 1903; re-en. Sec. 3293, Rev. C. 1907; re-en. Sec. 5077, R.C.M. 1921; re-en. Sec. 5077, R.C.M. 1935; Sec. 11-1209, R.C.M. 1947; R.C.M. 1947, 11-1208, 11-1209; amd. Sec. 304, Ch. 571, L. 1979.

Part 44

Municipal Elections

7-5-4401. Division of municipalities into wards. (1) The first city or town council elected under the provisions of this title must divide the city or town into wards for election and other purposes, having regard to population so as to make them as nearly equal as possible.

(2) (a) Cities of the first class must be divided into not less than four or more than 10 wards.

(b) Cities of the second class must be divided into not less than three or more than six wards.

(c) Cities of the third class must be divided into not less than two or more than four wards.

(d) Towns must be divided into not less than two or more than three wards; provided, however, that the town council may by ordinance reduce the number of wards in a town to only one if it so desires.

(3) All changes in the number and boundaries of wards must be made by ordinance. No new ward must be created unless there shall be within its boundaries 150 or more electors.

History: (1)En. Sec. 4746, Pol. C. 1895; re-en. Sec. 3222, Rev. C. 1907; re-en. Sec. 5001, R.C.M. 1921; re-en. Sec. 5001, R.C.M. 1935; Sec. 11-707, R.C.M. 1947; (2), (3)En. Sec. 4747, Pol C. 1895; re-en. Sec. 3223, Rev. C. 1907; amd. Sec. 1, Ch. 74, L. 1909; re-en. Sec. 5002, R.C.M. 1921; re-en. Sec. 5002, R.C.M. 1935; amd. Sec. 1, Ch. 39, L. 1943; Sec. 11-708, R.C.M. 1947; R.C.M. 1947, 11-707, 11-708.

Cross-References

Classification of cities, 7-1-4111.

7-5-4402 through 7-5-4409. Repealed. Sec. 407, Ch. 571, L. 1979.

Compiler's Comments

Histories of Repealed Sections:

7-5-4402. En. Sec. 4, p. 122, L. 1893; amd. Sec. 4748, Pol. C. 1895; re-en. Sec. 3224, Rev. C. 1907; re-en. Sec. 5003, R.C.M. 1921; amd. Sec. 1, Ch. 60, L. 1935; re-en. Sec. 4003, R.C.M. 1935; amd. Sec. 1, Ch. 193, L. 1971; amd. Sec. 1, Ch. 343, L. 1971; R.C.M. 1947, 11-709(part).

7-5-4403. En. Sec. 4754, Pol. C. 1895; re-en. Sec. 3230, Rev. C. 1907; re-en. Sec. 5009, R.C.M. 1921; re-en. Sec. 5009, R.C.M. 1935; amd. Sec. 4, Ch. 76, L. 1961; R.C.M. 1947, 11-715.

7-5-4404. En. Sec. 1, Ch. 187, L. 1907; Sec. 3232, Rev. C. 1907; amd. Sec. 1, Ch. 59, L. 1909; re-en. Sec. 5011, R.C.M. 1921; re-en. Sec. 5011, R.C.M. 1935; amd. Sec. 1, Ch. 19, L. 1939; amd. Sec. 1, Ch. 86, L. 1941; amd. Sec. 1, Ch. 124, L. 1947; amd. Sec. 1, Ch. 14, L. 1955; R.C.M. 1947, 11-717(part).

7-5-4405. En. Sec. 1, Ch. 187, L. 1907; Sec. 3232, Rev. C. 1907; amd. Sec. 1, Ch. 59, L. 1909; re-en. Sec. 5011, R.C.M. 1921; re-en. Sec. 5011, R.C.M. 1935; amd. Sec. 1, Ch. 19, L. 1939; amd. Sec. 1, Ch. 86, L. 1941; amd. Sec. 1, Ch. 124, L. 1947; amd. Sec. 1, Ch. 14, L. 1955; R.C.M. 1947, 11-717(part).

7-5-4406. En. Sec. 1, Ch. 187, L. 1907; Sec. 3232, Rev. C. 1907; amd. Sec. 1, Ch. 59, L. 1909; re-en. Sec. 5011, R.C.M. 1921; re-en. Sec. 5011, R.C.M. 1935; amd. Sec. 1, Ch. 19, L. 1939; amd. Sec. 1, Ch. 86, L. 1941; amd. Sec. 1, Ch. 124, L. 1947; amd. Sec. 1, Ch. 14, L. 1955; R.C.M. 1947, 11-717(part).

7-5-4407. En. Sec. 4757, Pol. C. 1895; re-en. Sec. 3233, Rev. C. 1907; re-en. Sec. 5012, R.C.M. 1921; re-en. Sec. 5012, R.C.M. 1935; R.C.M. 1947, 11-718.

7-5-4408. En. Sec. 57, Ch. 368, L. 1969; amd. Sec. 2, Ch. 343, L. 1971; R.C.M. 1947, 23-3302.

7-5-4409. En. Sec. 4784, Pol. C. 1895; re-en. Sec. 3253, Rev. C. 1907; re-en. Sec. 5033, R.C.M. 1921; Cal. Pol. C. Sec. 4393; re-en. Sec. 5033, R.C.M. 1935; R.C.M. 1947, 11-805(part).

CHAPTER 6

FINANCIAL ADMINISTRATION AND TAXATION

Part 1 — In-Lieu Payments for Taxes

7-6-101. Definitions.
7-6-102. Authorization to request in-lieu payments for taxes from United States.
7-6-103. Computation of payment in lieu of taxes.
7-6-104. Procedure to file agreement and collect in-lieu payments.
7-6-105. Establishment and use of government project fund.
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Part 4 — Counties and Municipalities Interest on Overdue Accounts

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Part 5 — Local Government Levy for Juvenile Detention Programs

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Part 11 — Tax and Revenue Anticipation Notes

7-6-1101. Definitions.
7-6-1102. Short-term obligations authorized.
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7-6-1106 through 7-6-1110 reserved.
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7-6-1112. Funds for payment of principal and interest.
7-6-1113 and 7-6-1114 reserved.
7-6-1115. Local government debt limitations not to apply to short-term obligations.
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Part 21 — Office of County Treasurer

7-6-2101. Procedure if county treasurer dies in office.
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Part 1
In-Lieu Payments for Taxes

Part Cross-References

Property subject to taxation, Title 15, ch. 6.

7-6-101. Definitions. The following definitions shall be applied to the terms used in this part:

(1) "Agreement" shall mean contract and shall include renewals and alterations of a contract.

(2) "Board" shall mean the board of county commissioners of any county in this state.

(3) "Fund" shall mean, unless otherwise expressed, the government project fund to be established pursuant to 7-6-105.

(4) "Governing body" shall mean the commission, board, body, or persons in which the powers of a subdivision as a body corporate or otherwise are vested.

(5) "Political subdivision" shall mean any agency or unit of this state which now is or hereafter shall be authorized to levy taxes or empowered to cause taxes to be levied.

(6) "Project" shall mean any resettlement project or rural rehabilitation project for resettlement purposes of the United States or any other lands formerly upon the tax rolls and purchased by the United States and used for resettlement, rehabilitation, or grazing purposes, located within this state or any political subdivision thereof, and shall include the persons inhabiting, occupying, or using any lands so owned or acquired by the United States.

(7) "Services" shall mean such public and municipal functions as are performed for property in and persons residing within a political subdivision.

(8) "United States" shall mean the United States of America.

History: En. Sec. 1, Ch. 59, L. 1939; amd. Sec. 1, Ch. 139, L. 1941; R.C.M. 1947, 84-5506.

7-6-102. Authorization to request in-lieu payments for taxes from United States. (1) The board of county commissioners of any county in this state is hereby authorized and empowered:

(a) to make requests of the United States, for and on behalf of the county and the political subdivisions whose jurisdictional limits are within or coextensive with the limits of the county, for payment of such sums in lieu of taxes as the United States may agree to pay; and

(b) to enter into agreements with the United States, in the name of the county, for the performance of services by the county and such political subdivisions for the benefit of the project and for the payment by the United States to the county, in one or more installments, of such sums in lieu of taxes.

(2) Each agreement entered into pursuant to subsection (1) shall contain the names of the political subdivisions with respect to which it is consummated and a statement of the proportionate share of the payment by the United States to which each such subdivision shall be entitled.

History: (1)En. Sec. 2, Ch. 59, L. 1939; Sec. 84-5507, R.C.M. 1947 (2)En. Sec. 4, Ch. 59, L. 1939; Sec. 84-5509, R.C.M. 1947; R.C.M. 1947, 84-5507, 84-5509.

7-6-103. Computation of payment in lieu of taxes. The amount of any payment of sums in lieu of taxes may be based on the estimated cost to each political subdivision, for and on whose behalf the agreement is entered into, of performing services for the benefit of a project during the period of the agreement, after taking into consideration the benefits to be derived by the subdivision from such project, but shall not be in excess of the taxes which would result to the subdivision for the said period if the real property of the project within the subdivision were taxable.

History: En. Sec. 3, Ch. 59, L. 1939; R.C.M. 1947, 84-5508.

Cross-References

Taxation of property, Title 15, ch. 6 through 24.

7-6-104. Procedure to file agreement and collect in-lieu payments. (1) The board shall file duplicate copies of every agreement for payment of sums in lieu of taxes with the county clerk and county treasurer.

(2) Upon receipt of the same, the county clerk shall notify each political subdivision for and on whose behalf the agreement is executed that the same has been consummated and state the share of the payment due thereunder to which the subdivision is entitled.

(3) On or before the date on which any payment of sums in lieu of taxes is due, the county treasurer shall present a bill to the United States, in the name of the county, in the amount of such payment. The county treasurer shall give to the United States a receipt in the name of the county for all payments of sums in lieu of taxes.

History: En. Sec. 5, Ch. 59, L. 1939; R.C.M. 1947, 84-5510.

7-6-105. Establishment and use of government project fund. (1) The county treasurer shall establish a fund in the county treasury to be known as the government project fund.

(2) The fund shall contain an account with each political subdivision which is entitled to a share of a payment of sums in lieu of taxes. Whenever such payment is received, the county treasurer shall apportion it to the several accounts in the fund, pursuant to the agreement under which the payment is made.

History: En. Sec. 6, Ch. 59, L. 1939; R.C.M. 1947, 84-5511.

7-6-106. Political subdivisions to receive county warrants for share of in-lieu payments. (1) After apportioning any payment to the several accounts as provided in 7-6-105, the county treasurer shall prepare in duplicate a complete itemized statement, one copy of which shall be filed with the board of county commissioners and the other of which shall be filed with the county clerk.

(2) The board shall, by appropriate resolution, order warrants drawn on the county treasury to the order of each political subdivision named in the itemized statement and in the amount of the political subdivision's share in the payment. The county clerk shall draw and sign the warrants, which shall also be signed by the chairman of the board.

(3) (a) Except as provided in subsection (3)(b), whenever such warrant is presented to the county treasurer, he shall debit the proper account in the fund and shall pay the amount of such warrant in full, without deduction, to the political subdivision presenting the same.

(b) The county treasurer may not honor such warrant unless it is endorsed by the president, chairman, or other presiding officer of the governing body of the political subdivision. The endorsement of any warrant by the presiding officer of the governing body of a political subdivision as provided in this section constitutes an approval of the agreement under which the payment was received. If any governing body of a political subdivision refuses to receive any warrant delivered pursuant to this section, the amount of the warrant shall be refunded to the United States by the county.

History: En. Sec. 7, Ch. 59, L. 1939; R.C.M. 1947, 84-5512; amd. Sec. 1, Ch. 252, L. 1979.

Cross-References

County resolutions, 7-5-121; Title 7, ch. 5, part 22.

7-6-107. Procedure for subdivisions other than county to deal directly with United States. (1) If the United States declines to deal with a board with respect to any political subdivision whose jurisdictional limits are within or coextensive with the limits of the county or in the event the jurisdictional limits of a political subdivision lie in more than one county, that subdivision is hereby:

(a) authorized to make request of the United States for payments of such sums in lieu of taxes as the United States may agree to pay; and

(b) empowered to enter into agreements with the United States for the performance by the subdivision of services for the benefit of a project and for the payment by the United States to the subdivision, in one or more installments, of such sums in lieu of taxes.

(2) The amount of such payment may be based upon the cost of performing such services during the period of the agreement, after taking into consideration the benefits to be derived by the subdivision from the project, but shall not be in excess of the taxes which would result to the political subdivision for the period if the real property of the project within the political subdivision were taxable. Whenever any payment is received by a subdivision under an agreement entered into pursuant to this section, the governing body of such subdivision shall issue a receipt for such payment.

History: En. Sec. 8, Ch. 59, L. 1939; R.C.M. 1947, 84-5513.

7-6-108. Disposition of in-lieu payments by subdivisions. All money received by a political subdivision pursuant to 7-6-106 or under 7-6-107 shall be deposited in such fund or funds or items of a fund or funds as may be designated in the agreement. If the agreement does not make such designation, the money received shall be deposited in such fund or funds or items of a fund or funds as the governing body of such subdivision shall by appropriate resolution direct.

History: **En. Sec. 9, Ch. 59, L. 1939; R.C.M. 1947, 84-5514.**

7-6-109. Requirement to provide services in absence of agreement. No provision of this part shall be construed to relieve any political subdivision of this state, in the absence of an agreement for payment of sums in lieu of taxes by the United States as provided in this part, of the duty of furnishing for the benefit of a project all services which the subdivision usually furnishes for property in and persons residing within the subdivision without a payment of sums in lieu of taxes.

History: **En. Sec. 10, Ch. 59, L. 1939; R.C.M. 1947, 84-5515.**

Part 2

Deposit and Investment of Public Money

Part Cross-References

Investment of county money in warrants, Title 7, ch. 6, part 27.

Deposit and investment of municipal money, Title 7, ch. 6, part 46.

Unified investment program, Title 17, ch. 6, part 2.

Investment of local government funds, 17-6-204.

Montana Health Facility Authority bonds — legal investment, 90-7-113.

7-6-201. Deposit of public funds in financial institutions. (1) Except as provided in 7-6-202, 7-6-206, or 7-6-2701, it shall be the duty of all county and city treasurers and town clerks to deposit all public money in their possession and under their control in any solvent banks, building and loan associations, savings and loan associations, or credit unions located in the county, city, or town of which such treasurer is an officer, subject to national supervision or state examination as the local governing body may designate, and no other.

(2) Said local governing body is hereby authorized to deposit such public money not necessary for immediate use by such county, city, or town in a savings or time deposit with any bank, building and loan association, savings and loan association, or credit union authorized above or in a repurchase agreement as authorized in 7-6-213.

(3) The treasurer or town clerk shall take from such bank, building and loan association, savings and loan association, or credit union such security as the local governing body may prescribe, approve, and deem fully sufficient and necessary to insure the safety and prompt payment of all such deposits, together with the interest on any time or savings deposits.

(4) All such deposits shall be subject to withdrawal by the treasurer or town clerk in such amounts as may be necessary from time to time. No deposit of funds shall be made or permitted to remain in any bank, building and loan association, savings and loan association, or credit union until the security for such deposits shall have been first approved by the local governing body and delivered to the treasurer or town clerk.

History: **En. Sec. 4367, Pol. C. 1895; amd. Sec. 1, Ch. 5, L. 1903; amd. Sec. 3003, Rev. C. 1907; amd. Sec. 1, Ch. 88, L. 1913; re-en. Sec. 4767, R.C.M. 1921; Cal. Pol. C. Sec. 4161;**

amd. Sec. 1, Ch. 89, L. 1923; amd. Sec. 1, Ch. 137, L. 1925; amd. Sec. 1, Ch. 134, L. 1927; amd. Sec. 1, Ch. 49, L. 1929; amd. Sec. 1, Ch. 23, Ex. L. 1933; re-en. Sec. 4767, R.C.M. 1935; amd. Sec. 1, Ch. 50, L. 1957; amd. Sec. 1, Ch. 66, L. 1961; amd. Sec. 1, Ch. 40, L. 1963; amd. Sec. 1, Ch. 32, L. 1965; amd. Sec. 1, Ch. 258, L. 1969; amd. Sec. 1, Ch. 499, L. 1973; amd. Sec. 1, Ch. 43, L. 1974; amd. Sec. 106, Ch. 348, L. 1974; amd. Sec. 1, Ch. 160, L. 1975; amd. Sec. 28, Ch. 213, L. 1975; amd. Sec. 2, Ch. 304; L. 1975; amd. Sec. 1, Ch. 539, L. 1975; R.C.M. 1947, 16-2618(part); amd. Sec. 2, Ch. 329, L. 1981; amd. Sec. 1, Ch. 421, L. 1985; amd. Sec. 1, Ch. 90, L. 1989.

Cross-References

Deposit security, 7-6-207, 17-6-103.

Investment of local government funds, 17-6-204.

Functions of State Banking Board, Title 32, ch. 1, part 2.

7-6-202. Investment of public money in direct obligations of the United States. (1) A local governing body may invest public money not necessary for immediate use by the county, city, or town in the following eligible securities:

(a) United States government treasury bills, notes, and bonds and in United States treasury obligations, such as state and local government series (SLGS), separate trading of registered interest and principal of securities (STRIPS), or similar United States treasury obligations;

(b) United States treasury receipts in a form evidencing the holder's ownership of future interest or principal payments on specific United States treasury obligations that, in the absence of payment default by the United States, are held in a special custody account by an independent trust company in a certificate or book-entry form with the federal reserve bank of New York; or

(c) obligations of the following agencies of the United States, subject to the limitations in subsection (2):

(i) federal home loan bank;

(ii) federal national mortgage association;

(iii) federal home mortgage corporation; and

(iv) federal farm credit bank.

(2) An investment in an agency of the United States is authorized under this section if the investment is a general obligation of the agency and has a fixed or zero-coupon rate and does not have prepayments that are based on underlying assets or collateral, including but not limited to residential or commercial mortgages, farm loans, multifamily housing loans, or student loans.

(3) The local governing body may invest in a United States government security money market fund if:

(a) the fund is sold and managed by a management-type investment company or investment trust registered under the Investment Company Act of 1940 (15 U.S.C. 80a-1 through 80a-64), as may be amended;

(b) the fund consists only of eligible securities as described in this section;

(c) the use of repurchase agreements is limited to agreements that are fully collateralized by the eligible securities, as described in this section, and the investment company or investment trust takes delivery of the collateral for any repurchase agreement, either directly or through an authorized custodian;

(d) the fund is listed in a national financial publication under the category of "money market mutual funds", showing the fund's average maturity, yield, and asset size; and

(e) the fund's average maturity does not exceed 397 days.

(4) An investment authorized in this part may not have a maturity date exceeding 5 years, except when the investment is used in an escrow account to refund an outstanding bond issue in advance.

(5) This section may not be construed to prevent the investment of public funds under the state unified investment program established in Title 17, chapter 6, part 2.

History: En. Sec. 4367, Pol. C. 1895; amd. Sec. 1, Ch. 5, L. 1903; amd. Sec. 3003, Rev. C. 1907; amd. Sec. 1, Ch. 88, L. 1913; re-en. Sec. 4767, R.C.M. 1921; Cal. Pol. C. Sec. 4161; amd. Sec. 1, Ch. 89, L. 1923; amd. Sec. 1, Ch. 137, L. 1925; amd. Sec. 1, Ch. 134, L. 1927; amd. Sec. 1, Ch. 49, L. 1929; amd. Sec. 1, Ch. 23, Ex. L. 1933; re-en. Sec. 4767, R.C.M. 1935; amd. Sec. 1, Ch. 50, L. 1957; amd. Sec. 1, Ch. 66, L. 1961; amd. Sec. 1, Ch. 40, L. 1963; amd. Sec. 1, Ch. 32, L. 1965; amd. Sec. 1, Ch. 258, L. 1969; amd. Sec. 1, Ch. 499, L. 1973; amd. Sec. 1, Ch. 43, L. 1974; amd. Sec. 106, Ch. 348, L. 1974; amd. Sec. 1, Ch. 160, L. 1975; amd. Sec. 28, Ch. 213, L. 1975; amd. Sec. 2, Ch. 304; L. 1975; amd. Sec. 1, Ch. 539, L. 1975; R.C.M. 1947, 16-2618(part); amd. Sec. 1, Ch. 620, L. 1985; amd. Sec. 1, Ch. 201, L. 1989; amd. Sec. 1, Ch. 271, L. 1993; amd. Sec. 1, Ch. 406, L. 1995.

Compiler's Comments

1995 Amendment: Chapter 406 substituted current text concerning eligible federal investments for former text that read: "(1) A local governing body may invest public money not necessary for immediate use by the county, city, or town in:

(a) direct obligations of the United States government;

(b) securities issued by agencies of the United States;

(c) securities guaranteed by the United States or by an agency of the United States but not issued by agencies of the United States; or

(d) mutual funds that invest only in:

(i) government obligations;

(ii) securities issued by agencies of the United States; or

(iii) securities guaranteed by the United States or by an agency of the United States but not issued by agencies of the United States.

(2) The local governing body may invest in these obligations either directly or in the form of securities of or other interests in an open-end or closed-end management type investment company or investment trust registered under the Investment Company Act of 1940 (15 U.S.C. 80a-1 through 80a-64), as amended, if:

(a) the portfolio of the investment company or investment trust is limited to United States government obligations and repurchase agreements fully collateralized by United States government obligations; and

(b) the investment company or investment trust takes delivery of the collateral for any repurchase agreement, either directly or through an authorized custodian." Amendment effective April 13, 1995.

Applicability: Section 5, Ch. 406, L. 1995, provided: "This act does not apply to and does not require the sale of securities that were legal investments before [the effective date of this act] [effective April 13, 1995]. Upon the liquidation of an investment authorized prior to [the effective date of this act] [effective April 13, 1995], the proceeds must be invested pursuant to [this act]."

7-6-203. Interest rates on deposits of public money. (1) The bank, building and loan association, savings and loan association, or credit union in which the money is deposited shall pay on the money no less than the rate of interest as is paid on money from private sources on the same terms.

(2) Refusal of any bank, building and loan association, savings and loan association, or credit union to pay said interest rate shall constitute a waiver of that institution's right to participate in the deposit of public funds as set forth in this part.

History: En. Sec. 4367, Pol. C. 1895; amd. Sec. 1, Ch. 5, L. 1903; amd. Sec. 3003, Rev. C. 1907; amd. Sec. 1, Ch. 88, L. 1913; re-en. Sec. 4767, R.C.M. 1921; Cal. Pol. C. Sec. 4161; amd. Sec. 1, Ch. 89, L. 1923; amd. Sec. 1, Ch. 137, L. 1925; amd. Sec. 1, Ch. 134, L. 1927;

amd. Sec. 1, Ch. 49, L. 1929; amd. Sec. 1, Ch. 23, Ex. L. 1933; re-en. Sec. 4767, R.C.M. 1935; amd. Sec. 1, Ch. 50, L. 1957; amd. Sec. 1, Ch. 66, L. 1961; amd. Sec. 1, Ch. 40, L. 1963; amd. Sec. 1, Ch. 32, L. 1965; amd. Sec. 1, Ch. 258, L. 1969; amd. Sec. 1, Ch. 499, L. 1973; amd. Sec. 1, Ch. 43, L. 1974; amd. Sec. 106, Ch. 348, L. 1974; amd. Sec. 1, Ch. 160, L. 1975; amd. Sec. 28, Ch. 213, L. 1975; amd. Sec. 2, Ch. 304; L. 1975; amd. Sec. 1, Ch. 539, L. 1975; R.C.M. 1947, 16-2618(part); amd. Sec. 2, Ch. 421, L. 1985.

7-6-204. Crediting of interest. (1) Unless otherwise provided, interest paid and collected on deposits or investments must be credited to the general fund of the county, city, or town to whose credit the funds are deposited.

(2) Interest paid and collected on the deposits or investments of the funds of a volunteer fire district or department organized in an unincorporated area under Title 7, chapter 33, part 21 or 23, must be credited to the account of that fire district or department.

(3) Interest paid and collected on the deposits or investments of the county road fund or county bridge fund may be credited to the county road fund or county bridge fund.

History: (1)En. Sec. 4367, Pol. C. 1895; amd. Sec. 1, Ch. 5, L. 1903; amd. Sec. 3003, Rev. C. 1907; amd. Sec. 1, Ch. 88, L. 1913; re-en. Sec. 4767, R.C.M. 1921; Cal. Pol. C. Sec. 4161; amd. Sec. 1, Ch. 89, L. 1923; amd. Sec. 1, Ch. 137, L. 1925; amd. Sec. 1, Ch. 134, L. 1927; amd. Sec. 1, Ch. 49, L. 1929; amd. Sec. 1, Ch. 23, Ex. L. 1933; re-en. Sec. 4767, R.C.M. 1935; amd. Sec. 1, Ch. 50, L. 1957; amd. Sec. 1, Ch. 66, L. 1961; amd. Sec. 1, Ch. 40, L. 1963; amd. Sec. 1, Ch. 32, L. 1965; amd. Sec. 1, Ch. 258, L. 1969; amd. Sec. 1, Ch. 499, L. 1973; amd. Sec. 1, Ch. 43, L. 1974; amd. Sec. 106, Ch. 348, L. 1974; amd. Sec. 1, Ch. 160, L. 1975; amd. Sec. 28, Ch. 213, L. 1975; amd. Sec. 2, Ch. 304; L. 1975; amd. Sec. 1, Ch. 539, L. 1975; R.C.M. 1947, 16-2618(part); (2)En. Sec. 1, Ch. 486, L. 1979; amd. Sec. 28, Ch. 575, L. 1981; amd. Sec. 1, Ch. 130, L. 1993.

Cross-References

Investment of local government funds, 17-6-204.

7-6-205. Demand deposits. (1) Demand deposits shall be placed only in banks.

(2) When more than one bank is available in any county for the deposit of such county funds or in any city or town for the deposit of such city or town funds, such demand deposits shall be distributed ratably among all of such banks qualifying therefor and substantially in proportion to paid-in capital and surplus of each such bank willing to receive such demand deposits under the terms of this part. It shall be the duty of said county or city treasurer or town clerk to prorate all such demand deposits among all of the banks qualified to receive the same as provided in this part, to the end that an equitable distribution of such demand deposits shall be maintained.

History: En. Sec. 4367, Pol. C. 1895; amd. Sec. 1, Ch. 5, L. 1903; amd. Sec. 3003, Rev. C. 1907; amd. Sec. 1, Ch. 88, L. 1913; re-en. Sec. 4767, R.C.M. 1921; Cal. Pol. C. Sec. 4161; amd. Sec. 1, Ch. 89, L. 1923; amd. Sec. 1, Ch. 137, L. 1925; amd. Sec. 1, Ch. 134, L. 1927; amd. Sec. 1, Ch. 49, L. 1929; amd. Sec. 1, Ch. 23, Ex. L. 1933; re-en. Sec. 4767, R.C.M. 1935; amd. Sec. 1, Ch. 50, L. 1957; amd. Sec. 1, Ch. 66, L. 1961; amd. Sec. 1, Ch. 40, L. 1963; amd. Sec. 1, Ch. 32, L. 1965; amd. Sec. 1, Ch. 258, L. 1969; amd. Sec. 1, Ch. 499, L. 1973; amd. Sec. 1, Ch. 43, L. 1974; amd. Sec. 106, Ch. 348, L. 1974; amd. Sec. 1, Ch. 160, L. 1975; amd. Sec. 28, Ch. 213, L. 1975; amd. Sec. 2, Ch. 304; L. 1975; amd. Sec. 1, Ch. 539, L. 1975; R.C.M. 1947, 16-2618(4)(a).

Cross-References

Demand deposit, 30-3-104, 32-1-109.

Bank capital and surplus, 32-1-109.

7-6-206. Time deposits — repurchase agreement. (1) Public money not necessary for immediate use by a county, city, or town that is not invested as authorized in 7-6-202 may be placed in time or savings deposits with a bank, savings and loan association, or credit union in the state or placed in repurchase agreements as authorized in 7-6-213. Money placed in repurchase agreements is subject to subsection (2).

(2) The local governing body may solicit bids for time or savings deposits from a bank, savings and loan association, or credit union in the state. The local governing body may deposit public money in the institutions unless a local financial institution agrees to pay the same rate of interest bid by a financial institution not located in the county, city, or town. The governing body may solicit bids by notice sent by mail to the investment institutions that have requested that their names be listed for bid notice with the department of administration.

History: En. Sec. 4367, Pol. C. 1895; amd. Sec. 1, Ch. 5, L. 1903; amd. Sec. 3003, Rev. C. 1907; amd. Sec. 1, Ch. 88, L. 1913; re-en. Sec. 4767, R.C.M. 1921; Cal. Pol. C. Sec. 4161; amd. Sec. 1, Ch. 89, L. 1923; amd. Sec. 1, Ch. 137, L. 1925; amd. Sec. 1, Ch. 134, L. 1927; amd. Sec. 1, Ch. 49, L. 1929; amd. Sec. 1, Ch. 23, Ex. L. 1933; re-en. Sec. 4767, R.C.M. 1935; amd. Sec. 1, Ch. 50, L. 1957; amd. Sec. 1, Ch. 66, L. 1961; amd. Sec. 1, Ch. 40, L. 1963; amd. Sec. 1, Ch. 32, L. 1965; amd. Sec. 1, Ch. 258, L. 1969; amd. Sec. 1, Ch. 499, L. 1973; amd. Sec. 1, Ch. 43, L. 1974; amd. Sec. 106, Ch. 348, L. 1974; amd. Sec. 1, Ch. 160, L. 1975; amd. Sec. 28, Ch. 213, L. 1975; amd. Sec. 2, Ch. 304; L. 1975; amd. Sec. 1, Ch. 539, L. 1975; R.C.M. 1947, 16-2618(4)(b), (4)(c); amd. Sec. 8, Ch. 634, L. 1979; amd. Sec. 3, Ch. 329, L. 1981; amd. Sec. 3, Ch. 421, L. 1985; amd. Sec. 2, Ch. 90, L. 1989; amd. Sec. 2, Ch. 271, L. 1993; amd. Sec. 2, Ch. 406, L. 1995.

Compiler's Comments

1995 Amendment: Chapter 406 in first sentence of (1), after "that is not invested", deleted "in direct obligations of the United States government or in mutual funds"; and made minor changes in style. Amendment effective April 13, 1995.

Applicability: Section 5, Ch. 406, L. 1995, provided: "This act does not apply to and does not require the sale of securities that were legal investments before [the effective date of this act] [effective April 13, 1995]. Upon the liquidation of an investment authorized prior to [the effective date of this act] [effective April 13, 1995], the proceeds must be invested pursuant to [this act]."

Cross-References

Certificate of deposit, 30-3-104.

7-6-207. Deposit security. (1) The local governing body may require security only for that portion of the deposits which is not guaranteed or insured according to law and, as to such unguaranteed or uninsured portion, to the extent of:

(a) 50% of such deposits if the institution in which the deposit is made has a net worth to total assets ratio of 6% or more; or

(b) 100% if the institution in which the deposit is made has a net worth to total assets ratio of less than 6%. The security shall consist of those enumerated in 17-6-103 or cashier's checks issued to the depository institution by any federal reserve bank.

(2) When negotiable securities are furnished, such securities may be placed in trust. The trustee's receipt may be accepted in lieu of the actual securities when such receipt is in favor of the treasurer or town clerk and his successors. All warrants or other negotiable securities must be properly assigned or endorsed in blank. It is the duty of the appropriate governing body, upon the acceptance and approval of any of the above-mentioned bonds or securities, to make a complete minute entry of the acceptance and approval upon the record of their proceedings, and the bonds and securities shall be reapproved at least quarter-annually thereafter.

History: En. Sec. 4367, Pol. C. 1895; amd. Sec. 1, Ch. 5, L. 1903; amd. Sec. 3003, Rev. C. 1907; amd. Sec. 1, Ch. 88, L. 1913; re-en. Sec. 4767, R.C.M. 1921; Cal. Pol. C. Sec. 4161; amd. Sec. 1, Ch. 89, L. 1923; amd. Sec. 1, Ch. 137, L. 1925; amd. Sec. 1, Ch. 134, L. 1927; amd. Sec. 1, Ch. 49, L. 1929; amd. Sec. 1, Ch. 23, Ex. L. 1933; re-en. Sec. 4767, R.C.M. 1935; amd. Sec. 1, Ch. 50, L. 1957; amd. Sec. 1, Ch. 66, L. 1961; amd. Sec. 1, Ch. 40, L. 1963; amd. Sec. 1, Ch. 32, L. 1965; amd. Sec. 1, Ch. 258, L. 1969; amd. Sec. 1, Ch. 499, L. 1973; amd. Sec. 1, Ch. 43, L. 1974; amd. Sec. 106, Ch. 348, L. 1974; amd. Sec. 1, Ch. 160, L. 1975; amd. Sec. 28, Ch. 213, L. 1975; amd. Sec. 2, Ch. 304; L. 1975; amd. Sec. 1, Ch. 539, L. 1975; R.C.M. 1947, 16-2618(2), (3); amd. Sec. 1, Ch. 158, L. 1979; amd. Sec. 2, Ch. 252, L. 1979; amd. Sec. 7, Ch. 274, L. 1981; amd. Sec. 1, Ch. 217, L. 1983; amd. Sec. 1, Ch. 287, L. 1983; amd. Sec. 2, Ch. 620, L. 1985.

Cross-References

Authority for depositing security for public funds, 32-1-447.

7-6-208. Substitution of deposit security. (1) Any bank, building and loan association, savings and loan association, or credit union pledging securities as provided in 7-6-207, at any time it deems advisable or desirable, may substitute like securities for all or any part of the securities pledged. The collateral so substituted shall be approved by the governing body of the county, city, or town at its next official meeting.

(2) Such securities so substituted shall at the time of substitution be at least equal in principal amount to the securities for which substitution is made. In the event that the securities so substituted are held in trust, the trustee shall, on the same day the substitution is made, forward a receipt by registered or certified mail to the county, city, or town and to the depository bank, building and loan association, savings and loan association, or credit union. The receipt shall specifically describe and identify both the securities so substituted and those released and returned to the depository bank, building and loan association, savings and loan association, or credit union.

History: En. Sec. 4367, Pol. C. 1895; amd. Sec. 1, Ch. 5, L. 1903; amd. Sec. 3003, Rev. C. 1907; amd. Sec. 1, Ch. 88, L. 1913; re-en. Sec. 4767, R.C.M. 1921; Cal. Pol. C. Sec. 4161; amd. Sec. 1, Ch. 89, L. 1923; amd. Sec. 1, Ch. 137, L. 1925; amd. Sec. 1, Ch. 134, L. 1927; amd. Sec. 1, Ch. 49, L. 1929; amd. Sec. 1, Ch. 23, Ex. L. 1933; re-en. Sec. 4767, R.C.M. 1935; amd. Sec. 1, Ch. 50, L. 1957; amd. Sec. 1, Ch. 66, L. 1961; amd. Sec. 1, Ch. 40, L. 1963; amd. Sec. 1, Ch. 32, L. 1965; amd. Sec. 1, Ch. 258, L. 1969; amd. Sec. 1, Ch. 499, L. 1973; amd. Sec. 1, Ch. 43, L. 1974; amd. Sec. 106, Ch. 348, L. 1974; amd. Sec. 1, Ch. 160, L. 1975; amd. Sec. 28, Ch. 213, L. 1975; amd. Sec. 2, Ch. 304; L. 1975; amd. Sec. 1, Ch. 539, L. 1975; R.C.M. 1947, 16-2618(7); amd. Sec. 4, Ch. 421, L. 1985.

7-6-209. Repealed. Sec. 2, Ch. 217, L. 1983.

History: En. Sec. 1, Ch. 44, L. 1931; re-en. Sec. 4767.3, R.C.M. 1935; amd. Sec. 70, Ch. 348, L. 1974; amd. Sec. 29, Ch. 213, L. 1975; R.C.M. 1947, 16-2621; amd. Sec. 7, Ch. 274, L. 1981.

7-6-210. Repealed. Sec. 13, Ch. 179, L. 1995.

History: En. Sec. 4367, Pol. C. 1895; amd. Sec. 1, Ch. 5, L. 1903; amd. Sec. 3003, Rev. C. 1907; amd. Sec. 1, Ch. 88, L. 1913; re-en. Sec. 4767, R.C.M. 1921; Cal. Pol. C. Sec. 4161; amd. Sec. 1, Ch. 89, L. 1923; amd. Sec. 1, Ch. 137, L. 1925; amd. Sec. 1, Ch. 134, L. 1927; amd. Sec. 1, Ch. 49, L. 1929; amd. Sec. 1, Ch. 23, Ex. L. 1933; re-en. Sec. 4767, R.C.M. 1935; amd. Sec. 1, Ch. 50, L. 1957; amd. Sec. 1, Ch. 66, L. 1961; amd. Sec. 1, Ch. 40, L. 1963; amd. Sec. 1, Ch. 32, L. 1965; amd. Sec. 1, Ch. 258, L. 1969; amd. Sec. 1, Ch. 499, L. 1973; amd. Sec. 1, Ch. 43, L. 1974; amd. Sec. 106, Ch. 348, L. 1974; amd. Sec. 1, Ch. 160, L. 1975; amd. Sec. 28, Ch. 213, L. 1975; amd. Sec. 2, Ch. 304; L. 1975; amd. Sec. 1, Ch. 539, L. 1975; R.C.M. 1947, 16-2618(part); amd. Sec. 7, Ch. 274, L. 1981; amd. Sec. 1, Ch. 287, L. 1983.

7-6-211. Report by financial institution. Any bank, building and loan association, savings and loan association, or credit union receiving such deposits shall, through its president and cashier or secretary, make a statement of account quarter-annually, under oath, showing:

(1) all such money that has been deposited with such bank, building and loan association, savings and loan association, or credit union during the quarter;

(2) the amount of daily balance in dollars;

(3) the amount of interest credited or paid therefor by such bank, building and loan association, savings and loan association, or credit union; and

(4) that neither such bank, building and loan association, savings and loan association, or credit union nor any officer thereof nor any person for it has paid or given any consideration or emolument whatsoever to the treasurer or town clerk or to any other person, other than the interest provided for herein, for or on account of the making of such deposits with any such bank, building and loan association, savings and loan association, or credit union.

History: En. Sec. 4367, Pol. C. 1895; amd. Sec. 1, Ch. 5, L. 1903; amd. Sec. 3003, Rev. C. 1907; amd. Sec. 1, Ch. 88, L. 1913; re-en. Sec. 4767, R.C.M. 1921; Cal. Pol. C. Sec. 4161; amd. Sec. 1, Ch. 89, L. 1923; amd. Sec. 1, Ch. 137, L. 1925; amd. Sec. 1, Ch. 134, L. 1927; amd. Sec. 1, Ch. 49, L. 1929; amd. Sec. 1, Ch. 23, Ex. L. 1933; re-en. Sec. 4767, R.C.M. 1935; amd. Sec. 1, Ch. 50, L. 1957; amd. Sec. 1, Ch. 66, L. 1961; amd. Sec. 1, Ch. 40, L. 1963; amd. Sec. 1, Ch. 32, L. 1965; amd. Sec. 1, Ch. 258, L. 1969; amd. Sec. 1, Ch. 499, L. 1973; amd. Sec. 1, Ch. 43, L. 1974; amd. Sec. 106, Ch. 348, L. 1974; amd. Sec. 1, Ch. 160, L. 1975; amd. Sec. 28, Ch. 213, L. 1975; amd. Sec. 2, Ch. 304; L. 1975; amd. Sec. 1, Ch. 539, L. 1975; R.C.M. 1947, 16-2618(part); amd. Sec. 5, Ch. 421, L. 1985.

7-6-212. Limitation on liability of treasurer or town clerk. Where money shall have been deposited in accordance with the provisions of this part, the treasurer or town clerk shall not be liable for loss on account of any such deposit that may occur through damage by the elements or for any other cause or reason occasioned through means other than his own neglect, fraud, or dishonorable conduct.

History: En. Sec. 4367, Pol. C. 1895; amd. Sec. 1, Ch. 5, L. 1903; amd. Sec. 3003, Rev. C. 1907; amd. Sec. 1, Ch. 88, L. 1913; re-en. Sec. 4767, R.C.M. 1921; Cal. Pol. C. Sec. 4161; amd. Sec. 1, Ch. 89, L. 1923; amd. Sec. 1, Ch. 137, L. 1925; amd. Sec. 1, Ch. 134, L. 1927; amd. Sec. 1, Ch. 49, L. 1929; amd. Sec. 1, Ch. 23, Ex. L. 1933; re-en. Sec. 4767, R.C.M. 1935; amd. Sec. 1, Ch. 50, L. 1957; amd. Sec. 1, Ch. 66, L. 1961; amd. Sec. 1, Ch. 40, L. 1963; amd. Sec. 1, Ch. 32, L. 1965; amd. Sec. 1, Ch. 258, L. 1969; amd. Sec. 1, Ch. 499, L. 1973; amd. Sec. 1, Ch. 43, L. 1974; amd. Sec. 106, Ch. 348, L. 1974; amd. Sec. 1, Ch. 160, L. 1975; amd. Sec. 28, Ch. 213, L. 1975; amd. Sec. 2, Ch. 304; L. 1975; amd. Sec. 1, Ch. 539, L. 1975; R.C.M. 1947, 16-2618(part).

7-6-213. Repurchase agreements — bidding. (1) After qualifying as provided in subsection (5), a financial institution may contract with a local governing body to establish one or more repurchase agreements, including daily repurchase agreements.

(2) A repurchase agreement is a contract that specifies the minimum and maximum of public money that the local governing body will invest under the contract in securities that the financial institution will sell to the local governing body and that the financial institution will repurchase on mutually agreeable terms.

(3) A repurchase agreement is not a demand account.

(4) The local governing body may maintain in the same financial institution contracting for the repurchase agreement a demand account into which each business day shall be deposited a sum equal to the day's disbursements, and that deposit will be the proceeds of the redemption by the financial institution of securities previously purchased by the local governing body under the provisions of the repurchase agreement, so that the balance of the demand account at the close of each day's business will be zero.

(5) The local governing body shall call for bids as provided in 7-6-206 to contract for a repurchase agreement from all financial institutions chartered to do business in the state of Montana which are authorized to accept demand deposits and to buy and sell securities. The call for bids shall specify the minimum acceptable rate of interest, effective date of the repurchase agreement and the period of duration and range of funds to be invested.

History: En. Sec. 1, Ch. 329, L. 1981; amd. Sec. 3, Ch. 620, L. 1985.

Part 3

Local Government Block Grant Program (Repealed. Sec. 38, Ch. 611, L. 1987)

Part Compiler's Comments

Histories of Repealed Sections:

7-6-301. En. Sec. 1, Ch. 708, L. 1983.

7-6-302. En. Sec. 2, Ch. 708, L. 1983; amd. Sec. 48, Ch. 281, L. 1983; amd. Sec. 1, Ch. 30, Sp. L. June 1986.

7-6-303. En. Sec. 3, Ch. 708, L. 1983; amd. Sec. 2, Ch. 30, Sp. L. June 1986.

7-6-304. En. Sec. 4, Ch. 708, L. 1983; amd. Sec. 3, Ch. 30, Sp. L. June 1986.

7-6-305. En. Sec. 5, Ch. 708, L. 1983; amd. Sec. 4, Ch. 30, Sp. L. June 1986.

7-6-306. En. Sec. 6, Ch. 708, L. 1983; amd. Sec. 5, Ch. 30, Sp. L. June 1986.

7-6-307. En. Sec. 7, Ch. 708, L. 1983.

7-6-308. En. Sec. 8, Ch. 708, L. 1983.

7-6-309. En. Sec. 9, Ch. 708, L. 1983; amd. Sec. 6, Ch. 30, Sp. L. June 1986.

Part 4

Counties and Municipalities Interest on Overdue Accounts

7-6-401. Definitions relating to interest assessment. As used in 7-6-402 and 7-6-403, the following definitions apply:

(1) "Services" means the furnishing of labor, time, or effort, including construction services, purchased or contracted for by a county or a municipality.

(2) "Supplies" means all personal property purchased, leased, or contracted for by a county or municipality, including leases of equipment. The term also includes leases of buildings or other real property by a county or municipality.

History: En. Sec. 1, Ch. 413, L. 1985.

7-6-402. Interest assessed on amounts due. (1) Except as provided in 7-6-403, a county or municipality shall pay simple interest at the rate of 0.05% each day on amounts due for supplies and services received if the county or municipality fails to make timely payment.

(2) For purposes of this section, payment is timely if a warrant is mailed or is otherwise made available to the payee when due and for the amount specified in the applicable contract or agreement. If no date is specified in the

applicable contract or agreement, payment is timely if paid within 35 days after receipt of a properly completed invoice, addressed to the payer county or municipality, or receipt of the supplies or services by the county or municipality, whichever is later.

History: En. Sec. 2, Ch. 413, L. 1985.

7-6-403. Exemptions. Section 7-6-402 does not apply to the following:

(1) interagency or intergovernmental transactions;

(2) claims subject to a good faith dispute;

(3) delinquencies due to natural disasters, disruptions in postal or delivery service, work stoppage due to labor disputes, power failures, or any other cause resulting from circumstances clearly beyond the control of the county or municipality;

(4) contracts entered into before October 1, 1985; or

(5) wages due and payable to county or municipal employees or payments from any retirement system created pursuant to Title 19.

History: En. Sec. 3, Ch. 413, L. 1985.

Part 5

Local Government Levy for Juvenile Detention Programs

7-6-501. Definitions. As used in 7-6-502 and this section, unless the context requires otherwise, the following definitions apply:

(1) "Detention" means the holding or temporary placement of a youth in a facility other than the youth's own home for the purpose of ensuring the continued custody of the youth at any time after the youth is taken into custody and before final disposition of his case.

(2) "Juvenile detention program" means services to provide for the lawful detention or shelter care of youth. The term includes:

(a) youth evaluations ordered by the court under 41-5-523; and

(b) programs for the transportation of youth to appropriate detention facilities or shelter care facilities.

(3) "Local government" has the same meaning as provided in 7-12-1103.

(4) "Shelter care" has the same meaning as provided in 41-5-103.

(5) "Youth" means an individual who is less than 18 years of age who is alleged to be a delinquent youth or youth in need of supervision as those terms are defined in 41-5-103.

History: En. Sec. 1, Ch. 745, L. 1991.

7-6-502. Levy for juvenile detention programs. (1) If approved by a majority of the qualified electors voting on the question, a local government may impose a levy on the taxable value of all property within its jurisdiction in an amount determined by the governing body for the purpose of financing the establishment and operation of juvenile detention programs.

(2) Local governments may use the funds derived from a levy authorized in subsection (1) to contract with other units of local government to purchase services from available juvenile detention programs consistent with the purposes of the levy as stated in subsection (1).

History: En. Sec. 2, Ch. 745, L. 1991.

Part 6

Local Government Alternative Accounting Method

Part Compiler's Comments

Effective Date: Section 69, Ch. 430, L. 1995, provided: "[This act] [Title 7, ch. 6, part 6] is effective on passage and approval." Approved April 13, 1995.

7-6-601. Purpose. The purpose of this part is to create an accounting method for local governments that provides an alternative to following the detailed bookkeeping rules contained in this title that have been built up over decades and to encourage local governments to adopt generally accepted accounting principles and auditing standards. These principles are more rigorous, comprehensive, and businesslike than those contained elsewhere in this title. It is the intent of the legislature that all local governments eventually follow generally accepted accounting principles and auditing standards.

History: En. Sec. 1, Ch. 430, L. 1995.

7-6-602. Definition. For the purposes of this part, "local government entity" means a consolidated city-county or a county or an incorporated city or town.

History: En. Sec. 2, Ch. 430, L. 1995.

7-6-603. Adoption of alternative accounting method. (1) A local government entity may by resolution adopt the alternative accounting method established in 7-6-604.

(2) A local government entity that adopts the alternative accounting method is considered to have complied with state accounting and financial reporting standards and requirements.

(3) A local government entity that does not adopt the alternative accounting method is subject to state accounting and financial reporting standards and requirements.

(4) A local government entity may not adopt the alternative accounting method unless it has received an auditor's unqualified opinion on its annual financial statements prepared for its preceding fiscal year.

(5) A local government entity that adopts the alternative accounting method by resolution shall submit a copy of the resolution to the department of commerce.

History: En. Sec. 3, Ch. 430, L. 1995.

7-6-604. Alternative accounting method — requirements. A local government entity that adopts the alternative accounting method shall:

(1) prepare its accounting records and financial reports in accordance with generally accepted accounting principles established by the governmental accounting standards board or its generally recognized successor;

(2) adopt a fiscal year that commences on July 1 of each year;

(3) (a) compile an annual financial report covering the preceding fiscal year and submit a copy of the annual financial report or an annual audit, pursuant to subsection (3)(b), to the department of commerce within 6 months of the end of that reported fiscal year; or

(b) if the local government entity submits an audit report in lieu of an annual financial report, ensure that the audit report contains, at a minimum, the entity's general purpose financial statements and combining and individual fund and account group statements as defined under the principles described in subsection (1);

(4) cause an annual audit in accordance with the provisions of Title 2, chapter 7, part 5; and

(5) ensure that a budget is made each year that:

(a) shows the complete expenditure program for the local government entity for the coming fiscal year and the sources by which it will be funded;

(b) must be completed by July 1 of the current fiscal year;

(c) must be approved or amended by the governing body in a regularly scheduled meeting;

(d) must be the subject of one or more advertised public hearings, pursuant to the provisions of 7-1-2121 or 7-1-4127, prior to approval or amendment; and

(e) must be submitted to the department of commerce by September 15.

History: En. Sec. 4, Ch. 430, L. 1995.

Parts 7 through 10 reserved

Part 11

Tax and Revenue Anticipation Notes

Part Cross-References

School finance, Title 20, ch. 9.

7-6-1101. Definitions. As used in this part, unless the context clearly requires otherwise, the following definitions apply:

(1) "Governing body" means the legislative authority of a local government, by whatever name designated.

(2) "Local government" means any city, town, county, consolidated city-county, or school district.

(3) "Ordinance" means an ordinance or resolution of the local government.

(4) "Short-term obligations" are tax anticipation notes or revenue anticipation notes that mature at a time not to exceed 13 months from the date issued.

History: En. Sec. 1, Ch. 481, L. 1985.

7-6-1102. Short-term obligations authorized. A local government may issue and sell short-term obligations as provided in this part in anticipation of taxes or revenues budgeted to be received and appropriated for expenditure during the fiscal year in which the obligations are issued. The proceeds of the obligations may be expended solely for the purposes for which the taxes or revenues were appropriated and for costs and expenses incident to the issuance and sale thereof. Pending expenditure, the proceeds may be invested as provided by law. The principal and interest on short-term obligations must be repaid from the money derived from the taxes and revenues in anticipation of which they were issued, income from investment of the proceeds of the obligations, and any money otherwise legally available for this purpose.

History: En. Sec. 2, Ch. 481, L. 1985.

7-6-1103. Issuance and sale of short-term obligations — procedure. (1) The issuance of short-term obligations must be authorized by an ordinance of the governing body that fixes the maximum amount of the obligations to be issued or, if applicable, the maximum amount that may be outstanding at any time, the maximum term and interest rate or rates to be borne by the obligations, the manner of sale, the maximum price, the form including bearer or registered as provided in Title 17, chapter 5, part 11, the terms, the conditions, and the covenants of the obligations. Short-term obligations issued under this section must bear fixed or variable rate or rates of interest that the governing body considers to be in the best interests of the local government. Variable rates of interest may be fixed in relationship to the standard or index that the governing body designates.

(2) The governing body may sell the short-term obligations at par or at a discount:

(a) at private negotiated sale to the board of investments as provided in Title 17, chapter 5, part 16; or

(b) at public sale to any other person. Any public sale must be noticed as provided in 7-7-4434.

History: **En. Sec. 3, Ch. 481, L. 1985; amd. Sec. 4, Ch. 581, L. 1987; amd. Sec. 1, Ch. 423, L. 1995.**

Compiler's Comments

1995 Amendment: Chapter 423 at end of (2)(b) deleted reference to subsection (2) of 7-7-4434; and made minor changes in style. Amendment effective April 13, 1995.

Applicability: Section 53, Ch. 423, L. 1995, provided: "[This act] applies to bonds issued under the provisions of [this act] after [the effective date of this act]." Effective April 13, 1995.

7-6-1104 reserved.

7-6-1105. Refunding and renewal of short-term obligations. Short-term obligations may, from time to time, be renewed or refunded by the issuance of short-term obligations. Short-term obligations may not be renewed or refunded to a date later than 6 months from the end of the fiscal year in which the original short-term obligation was issued.

History: **En. Sec. 4, Ch. 481, L. 1985.**

7-6-1106 through 7-6-1110 reserved.

7-6-1111. Short-term obligations — security. Short-term obligations are general obligations of the local government and must be secured by the taxes and revenues in anticipation of which the short-term obligations were issued and in such other manner as set forth in the ordinance authorizing their issuance.

History: **En. Sec. 5, Ch. 481, L. 1985.**

7-6-1112. Funds for payment of principal and interest. For the purpose of providing funds for the payment of principal of and interest on short-term obligations, the governing body may authorize the creation of a special fund or funds and provide for the payment from authorized sources to such funds of amounts sufficient to meet principal and interest requirements.

History: **En. Sec. 6, Ch. 481, L. 1985.**

7-6-1113 and 7-6-1114 reserved.

7-6-1115. Local government debt limitations not to apply to short-term obligations. The debt limitations for local governments in Title 7, chapter 7, and Title 20, chapter 9, do not apply to short-term obligations issued in accordance with this part.

History: En. Sec. 7, Ch. 481, L. 1985.

7-6-1116. Authority cumulative. The authority granted by this part is in addition and supplemental to any other authority granted and does not limit any other authority previously granted to any local government.

History: En. Sec. 8, Ch. 481, L. 1985.

Parts 12 through 20 reserved

Part 21

Office of County Treasurer

Part Cross-References

Term of Treasurer — first Monday in March, 7-4-2205.

7-6-2101. Procedure if county treasurer dies in office. (1) In case of the death of any county treasurer, his legal representatives must deliver up all official money, books, accounts, papers, and documents which come into their possession.

(2) No percentage must be allowed to the treasurer on any money received by him from the legal representative of such predecessor.

History: En. Sec. 4369, Pol. C. 1895; re-en. Sec. 3005, Rev. C. 1907; re-en. Sec. 4769, R.C.M. 1921; Cal. Pol. C. Sec. 4163; re-en. Sec. 4769, R.C.M. 1935; R.C.M. 1947, 16-2623(part).

Cross-References

Personal representatives, Title 72, ch. 3, part 5.

7-6-2102. Limitation on number of deputy county treasurers. (1) Except as provided in subsection (2), the whole number of deputies allowed the county treasurer must not exceed:

(a) two in counties of the first class;

(b) one in counties of all other classes.

(2) The board of county commissioners may allow such additional deputies as may be necessary during the months of November and December of each year.

History: En. Sec. 2, Ch. 75, L. 1905; re-en. Sec. 3128, Rev. C. 1907; re-en. Sec. 4880, R.C.M. 1921; re-en. Sec. 4880, R.C.M. 1935; amd. Sec. 1, Ch. 97, L. 1939; amd. Sec. 2, Ch. 87, L. 1943; amd. Sec. 7, Ch. 391, L. 1973; R.C.M. 1947, 16-3706(part).

Cross-References

Deputy officers, Title 7, ch. 4, part 24.

Authorization to exceed limitation on number of deputies, 7-4-2402.

Veterans' public employment preference, Title 39, ch. 29.

Handicapped persons' public employment preference, Title 39, ch. 30.

7-6-2103. Suspension of county treasurer in case of misconduct. Whenever any action based upon official misconduct is commenced against any county treasurer, the board of county commissioners may in its discretion suspend him from office until such suit is determined and may appoint some person to fill the vacancy.

History: **En. Sec. 4368, Pol. C. 1895; re-en. Sec. 3004, Rev. C. 1907; re-en. Sec. 4768, R.C.M. 1921; Cal. Pol. C. Sec. 4162; re-en. Sec. 4768, R.C.M. 1935; R.C.M. 1947, 16-2622.**

Cross-References

Vacancy in county office, 7-4-2206.

7-6-2104 through 7-6-2110 reserved.

7-6-2111. Duties of county treasurer. (1) The county treasurer:

(a) must receive all money belonging to the county and all other money directed to be paid to the treasurer by law, safely keep the money, and apply and pay the money out, and account for the money as required by law;

(b) shall keep an account of the receipt and expenditures of the money in books provided for the purpose, in which must be entered:

(i) the amount, the time when, from whom, and on what account all money was received;

(ii) the amount, time when, to whom, and on what account all disbursements were made;

(c) shall keep books so that the amounts received and paid out on account of separate funds or specific appropriations are exhibited in separate and distinct accounts, with the whole receipts and expenditures shown in one general or cash account;

(d) may not enter money received for the current year on the treasurer's account with the county for the past fiscal year until after the treasurer's annual settlement for the past year has been made with the county clerk;

(e) shall disburse the county money only on county warrants issued by the county clerk, based on orders of the board of county commissioners, or as otherwise provided by law.

(2) This section does not apply to a county that has adopted the alternative accounting method provided for in Title 7, chapter 6, part 6.

History: **En. Sec. 4350, Pol. C. 1895; re-en. Sec. 2986, Rev. C. 1907; re-en. Sec. 4750, R.C.M. 1921; Cal. Pol. C. Sec. 4144; re-en. Sec. 4750, R.C.M. 1935; amd. Sec. 3, Ch. 452, L. 1975; R.C.M. 1947, 16-2601(1) thru (5); amd. Sec. 10, Ch. 430, L. 1995.**

Compiler's Comments

1995 Amendment: Chapter 430 inserted (2) providing exception for county that has adopted alternative accounting method provided in Title 7, chapter 6, part 6; and made minor changes in style. Amendment effective April 13, 1995.

Cross-References

Management of school money, Title 7, ch. 6, part 28.

Payments by state to local government entities — notice, 17-8-311.

7-6-2112. Treasurer's reports to county commissioners — exception. (1) Each county treasurer shall make a detailed monthly report to the board of county commissioners, of all money received and disbursed by the treasurer, of all debts due to and from the county, and of all other proceedings in the treasurer's office so that the receipts into the treasury and the amount of disbursements, together with the debts due to and from the county, appear clearly and distinctly.

(2) On the first Monday of January, April, July, and October of each year the county treasurer shall settle with the board of county commissioners for all money collected. On those days the treasurer shall deliver to the board affidavits verifying the reconcilement of the balance on hand in the county treasury. After the approval of the statements and the accompanying affidavits,

one copy of the quarterly report must be filed with the county clerk of the county and one copy must be retained by the county treasurer.

(3) This section does not apply to a county that has adopted the alternative accounting method provided for in Title 7, chapter 6, part 6.

History: En. Sec. 4361, Pol. C. 1895; re-en. Sec. 2997, Rev. C. 1907; re-en. Sec. 4761, R.C.M. 1921; Cal. Pol. C. Sec. 4155; re-en. Sec. 4761, R.C.M. 1935; amd. Sec. 1, Ch. 75, L. 1941; R.C.M. 1947, 16-2612; amd. Sec. 3, Ch. 252, L. 1979; amd. Sec. 11, Ch. 430, L. 1995.

Compiler's Comments

1995 Amendment: Chapter 430 inserted (3) providing exception for county that has adopted alternative accounting method provided in Title 7, chapter 6, part 6; and made minor changes in style. Amendment effective April 13, 1995.

7-6-2113. Effect of failure to make treasurer's report. If any county treasurer neglects or refuses to settle or report as required in 7-6-2112, he forfeits and must pay to the county the sum of $500 for every such neglect or refusal. The board of county commissioners must institute suits for the recovery thereof.

History: En. Sec. 4362, Pol. C. 1895; re-en. Sec. 2998, Rev. C. 1907; re-en. Sec. 4762, R.C.M. 1921; Cal. Pol. C. Sec. 4156; re-en. Sec. 4762, R.C.M. 1935; R.C.M. 1947, 16-2613.

Cross-References

County Attorney — actions to recover money, 7-4-2713.

7-6-2114. Inspection of treasurer's books and records. (1) The books, accounts, and vouchers of the treasurer are at all times subject to the inspection and examination of the board of county commissioners and the grand jury.

(2) The treasurer must permit the department of commerce and county clerk or the board of county commissioners to examine his books and count the money in the treasury when any of them wants to make an examination or counting.

History: (1)En. Sec. 4370, Pol. C. 1895; re-en. Sec. 3006, Rev. C. 1907; re-en. Sec. 4770, R.C.M. 1921; Cal. Pol. C. Sec. 4164; re-en. Sec. 4770, R.C.M. 1935; Sec. 16-2624, R.C.M. 1947; (2)En. Sec. 4371, Pol. C. 1895; re-en. Sec. 3007, Rev. C. 1907; re-en. Sec. 4771, R.C.M. 1921; Cal. Pol. C. Sec. 4165; amd. Sec. 1, Ch. 124, L. 1935; re-en. Sec. 4771, R.C.M. 1935; amd. Sec. 71, Ch. 348, L. 1974; amd. Sec. 1, Ch. 61, L. 1975; amd. Sec. 30, Ch. 213, L. 1975; Sec. 16-2625, R.C.M. 1947; R.C.M. 1947, 16-2624, 16-2625(1); amd. Sec. 7, Ch. 274, L. 1981; amd. Sec. 1, Ch. 287, L. 1983.

Cross-References

Right to examine documents, Art. II, sec. 9, Mont. Const.

Audits of political subdivisions, Title 2, ch. 7, part 5.

7-6-2115. Manner of settling accounts. (1) The treasurer must settle his accounts relating to the collection, care, and disbursement of public revenue of whatsoever nature and kind with the county clerk on the first Monday of each month. For the purpose of making such settlements, he must make out a statement, under oath, of the amount of money or other property received prior to the period of such settlement, the sources whence the same was derived, the amount of payments or disbursements and to whom, with the amount remaining on hand. He must, in such settlements, deposit all warrants redeemed by him and take the county clerk's receipt therefor.

(2) He must make a full settlement of all accounts with the county clerk, annually on the first Monday of January and in the presence of the county commissioners, who have control thereof.

History: En. Sec. 4360, Pol. C. 1895; re-en. Sec. 2996, Rev. C. 1907; re-en. Sec. 4760, R.C.M. 1921; Cal. Pol. C. Sec. 4154; re-en. Sec. 4760, R.C.M. 1935; R.C.M. 1947, 16-2611.

7-6-2116. Receipt for money paid to county treasurer. (1) Except as provided in subsection (2), when any money is paid to the county treasurer, he must issue a receipt, in triplicate, for such money, the original of which shall be delivered to the person paying the same, the duplicate of which shall be delivered to the county clerk, and the triplicate shall be retained in his office.

(2) When any money is paid to the county treasurer through the mail or by any electronic means, he must issue receipts for the money. The original receipt shall be retained in his office and a duplicate shall be delivered to the county clerk. Upon request the county treasurer must issue a receipt to the person paying the money.

History: En. Sec. 4351, Pol. C. 1895; re-en. Sec. 2987, Rev. C. 1907; re-en. Sec. 4751, R.C.M. 1921; Cal. Pol. C. Sec. 4146; amd. Sec. 1, Ch. 92, L. 1923; re-en. Sec. 4751, R.C.M. 1935; R.C.M. 1947, 16-2602; amd. Sec. 1, Ch. 599, L. 1987.

7-6-2117. Receipt of money from county attorney. (1) The county attorney must, on the first Monday of January, April, July, and October in each year file with the county clerk an account, verified by his oath, of all money received by him in his official capacity during the preceding 3 months and at the same time pay it over to the county treasurer.

(2) If the county attorney refuses or neglects to account for and pay over money received by him as required by subsection (1), the county treasurer must bring an action against him for the recovery thereof in the name of the county and may recover in such action, in addition to the amount so received, 50% thereon by way of damages.

History: (1)En. Sec. 4450, Pol. C. 1895; amd. Sec. 1, p. 76, L. 1899; re-en. Sec. 3052, Rev. C. 1907; re-en. Sec. 4819, R.C.M. 1921; Cal. Pol. C. Sec. 4256; amd. Sec. 1, Ch. 187, L. 1935; re-en. Sec. 4819, R.C.M. 1935; amd. Sec. 1, Ch. 17, L. 1965; Sec. 16-3101, R.C.M. 1947; (2)En. Sec. 4363, Pol. C. 1895; re-en. Sec. 2999, Rev. C. 1907; re-en. Sec. 4763, R.C.M. 1921; Cal. Pol. C. Sec. 4157; re-en. Sec. 4763, R.C.M. 1935; Sec. 16-2614, R.C.M. 1947; R.C.M. 1947, 16-2614, 16-3101(5).

7-6-2118. Receipt of money from predecessor county treasurer. No percentage must be allowed to the treasurer on any money received by him from his predecessor in office.

History: En. Sec. 4369, Pol. C. 1895; re-en. Sec. 3005, Rev. C. 1907; re-en. Sec. 4769, R.C.M. 1921; Cal. Pol. C. Sec. 4163; re-en. Sec. 4769, R.C.M. 1935; R.C.M. 1947, 16-2623(part).

7-6-2119 through 7-6-2130 reserved.

7-6-2131. Fees of county treasurer. The county treasurer shall receive the sum of $25 plus actual costs incurred for making and acknowledging a deed for property sold for delinquent taxes.

History: En. Sec. 1, p. 49, L. 1899; re-en. Sec. 3171, Rev. C. 1907; re-en. Sec. 4920, R.C.M. 1921; re-en. Sec. 4920, R.C.M. 1935; R.C.M. 1947, 25-234; amd. Sec. 1, Ch. 100, L. 1989.

Cross-References

Collection and disposal of fees, 7-4-2511.

7-6-2132 through 7-6-2140 reserved.

7-6-2141. Coordination of state revenue collected by counties — duties of department of commerce. (1) The department of commerce shall advise the counties concerning any questions involving collection of revenue on behalf of the state. The department shall prepare and distribute a county collections manual to county treasurers, setting forth the procedures and forms to be used by the counties in collecting revenue for the state. The manual must be revised at least biennially, with the manual and revisions being sent to each county treasurer.

(2) State agencies receiving revenue collected by the counties shall coordinate the collection of revenue with the department. Necessary instructions or procedures must be submitted to the counties by state agencies through the department to provide coordination and ensure placement in the county collections manual.

History: En. Sec. 1, Ch. 369, L. 1987.

Part 22

General Provisions Related to Counties

7-6-2201. Fiscal year for counties. The fiscal year for county purposes commences on July 1 of each year and ends on June 30 of the following year.

History: En. Sec. 3821, Pol. C. 1895; re-en. Sec. 2594, Rev. C. 1907; amd. Sec. 1, Ch. 73, L. 1921; re-en. Sec. 518, R.C.M. 1921; re-en. Sec. 518, R.C.M. 1935; amd. Sec. 1, Ch. 121, L. 1953; amd. Sec. 1, Ch. 84, L. 1955; amd. Sec. 2, Ch. 127, L. 1961; amd. Sec. 1, Ch. 175, L. 1969; amd. Sec. 98, Ch. 326, L. 1974; R.C.M. 1947, 59-701(part); amd. Sec. 4, Ch. 252, L. 1979.

7-6-2202. Duties of county clerk related to finance — exception. (1) The county clerk shall draw warrants on the county treasury in favor of all persons entitled to the warrants in payment:

(a) of all claims and demands chargeable against the county which have been legally examined, allowed, and ordered paid by the board of county commissioners; and

(b) for all debts and demands against the county when the amounts are fixed by law and are not directed to be audited by some other person or tribunal.

(2) The county clerk shall keep accounts current with the treasurer. When any person deposits with the county treasurer any money paid into the treasury, the county clerk must be furnished by the treasurer with a duplicate of the receipt issued to the person. The duplicate receipt must be filed in the office of the county clerk, and the county clerk shall charge the treasurer with the amount of the deposit.

(3) The county clerk shall make the annual statement as prescribed in 7-6-2203.

(4) This section does not apply to a county that has adopted the alternative accounting method provided for in Title 7, chapter 6, part 6.

History: En. Sec. 4424, Pol. C. 1895; re-en. Sec. 3045, Rev. C. 1907; re-en. Sec. 4811, R.C.M. 1921; Cal. Pol. C. Sec. 4204; amd. Sec. 1, Ch. 79, L. 1923; re-en. Sec. 4811, R.C.M. 1935; R.C.M. 1947, 16-2917(part); amd. Sec. 5, Ch. 252, L. 1979; amd. Sec. 12, Ch. 430, L. 1995.

Compiler's Comments

1995 Amendment: Chapter 430 inserted (4) providing exception for county that has adopted alternative accounting method provided in Title 7, chapter 6, part 6; and made minor changes in style. Amendment effective April 13, 1995.

Cross-References

Clerk's monthly financial report, 7-6-2331.

7-6-2203. Annual financial statement — exception. (1) Within 120 days after the close of each fiscal year, the county clerk shall compile and present to the board of county commissioners and the department of commerce a complete statement of the financial condition of the county. The statement must show:

(a) a detailed description of all of the resources and liabilities of the county and the book value of the resources and liabilities;

(b) the amount of money received, showing the source of that revenue;

(c) the amount of money disbursed, with the purpose of disbursement;

(d) the operation of each of the cash and warrant accounts, showing the balance at the beginning of the year, the credits, the debits, and the balance at the end of the year;

(e) the assessed valuation of the real and personal property of the county;

(f) the rate of taxation and the amount of taxes delinquent for the preceding years; and

(g) other items that the department of commerce may prescribe.

(2) The statement must be on the form designated by the department.

(3) This section does not apply to a county that has adopted the alternative accounting method provided for in Title 7, chapter 6, part 6.

History: En. Sec. 778, 5th Div. Comp. Stat. 1887; amd. Sec. 4294, Pol. C. 1895; re-en. Sec. 2953, Rev. C. 1907; re-en. Sec. 4814, R.C.M. 1921; amd. Sec. 1, Ch. 2, L. 1925; amd. Sec. 1, Ch. 106, L. 1927; re-en. Sec. 4814, R.C.M. 1935; amd. Sec. 72, Ch. 348, L. 1974; amd. Sec. 31, Ch. 213, L. 1975; R.C.M. 1947, 16-2924; amd. Sec. 7, Ch. 274, L. 1981; amd. Sec. 1, Ch. 287, L. 1983; amd. Sec. 1, Ch. 177, L. 1989; amd. Sec. 13, Ch. 430, L. 1995.

Compiler's Comments

1995 Amendment: Chapter 430 inserted (3) providing exception for county that has adopted alternative accounting method provided in Title 7, chapter 6, part 6; and made minor changes in style. Amendment effective April 13, 1995.

Cross-References

Inclusion of amount of emergency warrants, 7-6-2345.

7-6-2204. Cash verification by county clerk. The county clerk and recorder, at the close of business each month, shall count the cash in the office of the county treasurer and shall retain a copy of the counting in his office.

History: En. Sec. 4371, Pol. C. 1895; re-en. Sec. 3007, Rev. C. 1907; re-en. Sec. 4771, R.C.M. 1921; Cal. Pol. C. Sec. 4165; amd. Sec. 1, Ch. 124, L. 1935; re-en. Sec. 4771, R.C.M. 1935; amd. Sec. 71, Ch. 348, L. 1974; amd. Sec. 1, Ch. 61, L. 1975; amd. Sec. 30, Ch. 213, L. 1975; R.C.M. 1947, 16-2625(2).

7-6-2205 and 7-6-2206 reserved.

7-6-2207. Deposit of nontax revenue. Except for nontax revenue earmarked for a specific fund, the county treasurer may deposit in the general fund any nontax revenue of $25 or less received by the county.

History: En. Sec. 1, Ch. 93, L. 1991.

7-6-2208 through 7-6-2210 reserved.

7-6-2211. Authorization to conduct county business on a cash basis. (1) If the total indebtedness of a county, lawful when incurred, exceeds the limit of 23% established in 7-7-2101 by reason of great diminution of taxable value, the county may conduct its business affairs on a cash basis and pay the reasonable and necessary current expenses of the county out of the cash in the county treasury derived from its current revenue and under the restrictions and regulations that may be imposed by the board of county commissioners of the county by a resolution duly adopted and included in the minutes of the board.

(2) This section does not restrict the right of the board to make the necessary tax levies for interest and sinking fund purposes, and this section does not affect the right of any creditor of the county to pursue any remedy now given by law to obtain payment of a claim.

(3) Subsection (1) does not apply to a county that has adopted the alternative accounting method provided for in Title 7, chapter 6, part 6.

History: En. Sec. 1, Ch. 93, L. 1935; re-en. Sec. 4447.1, R.C.M. 1935; amd. Sec. 2, Ch. 33, L. 1973; amd. Sec. 36, Ch. 566, L. 1977; R.C.M. 1947, 16-808; amd. Sec. 40, Ch. 614, L. 1981; amd. Sec. 9, Ch. 220, L. 1985; amd. Sec. 14, Ch. 430, L. 1995.

Compiler's Comments

1995 Amendment: Chapter 430 inserted (3) providing exception for county that has adopted alternative accounting method provided in Title 7, chapter 6, part 6; and made minor changes in style. Amendment effective April 13, 1995.

7-6-2212. Authorization to maintain petty cash fund. (1) The board of county commissioners may set aside a sum of not less than $100 or more than $1,000 out of the general fund, which must be known as a petty cash fund, for the purpose of paying incidental expenses, such as freight, express, postage, and other similar items, which must be paid in cash at the time of delivery.

(2) (a) In counties having a county auditor, the county auditor is responsible for expenditures from the petty cash fund.

(b) In counties not having a county auditor, the county clerk is responsible for expenditures from the petty cash fund.

History: En. Sec. 4257, Pol. C. 1895; re-en. Sec. 2922, Rev. C. 1907; re-en. Sec. 4632, R.C.M. 1921; amd. Sec. 1, Ch. 141, L. 1925; re-en. Sec. 4632, R.C.M. 1935; amd. Sec. 69, Ch. 348, L. 1974; amd. Sec. 27, Ch. 213, L. 1975; R.C.M. 1947, 16-2049; amd. Sec. 7, Ch. 274, L. 1981; amd. Sec. 1, Ch. 287, L. 1983; amd. Sec. 6, Ch. 179, L. 1995.

Compiler's Comments

1995 Amendment: Chapter 179 in (1), after "The board of county commissioners", deleted "with the approval of the department of commerce"; and made minor changes in style. Amendment effective July 1, 1995.

7-6-2213. Report of fees received and money disbursed — exception. (1) All county officers, justices of the peace, and constables shall report in writing, under oath, to the board of county commissioners on the first Monday of March, June, September, and December, showing in detail all fees, emoluments, and compensation received and money disbursed by them in their official capacity during the quarter preceding the making of each report.

(2) This section does not apply to a county that has adopted the alternative accounting method provided for in Title 7, chapter 6, part 6.

History: En. Sec. 4336, Pol. C. 1895; re-en. Sec. 2981, Rev. C. 1907; re-en. Sec. 4745, R.C.M. 1921; re-en. Sec. 4745, R.C.M. 1935; R.C.M. 1947, 16-2423; amd. Sec. 15, Ch. 430, L. 1995.

Compiler's Comments

1995 Amendment: Chapter 430 inserted (2) providing exception for county that has adopted alternative accounting method provided in Title 7, chapter 6, part 6; and made minor changes in style. Amendment effective April 13, 1995.

7-6-2214. Examination of report. (1) It is the duty of the board to examine the reports.

(2) (a) If the report of an officer is found correct, the chairman of the board must write on the back of the same the words "Approved and ordered filed" and sign his name thereto.

(b) If any report is found not correct, it must be returned to the officer with a statement of its insufficiency, and the report must be corrected and returned to the board and then, if found correct, filed as aforesaid.

History: En. Sec. 4337, Pol. C. 1895; re-en. Sec. 2982, Rev. C. 1907; re-en. Sec. 4746, R.C.M. 1921; re-en. Sec. 4746, R.C.M. 1935; R.C.M. 1947, 16-2424.

7-6-2215. Repealed. Sec. 1, Ch. 135, L. 1979.

History: En. Sec. 4338, Pol. C. 1895; re-en. Sec. 2983, Rev. C. 1907; re-en. Sec. 4747, R.C.M. 1921; re-en. Sec. 4747, R.C.M. 1935; R.C.M. 1947, 16-2425.

7-6-2216. Repealed. Sec. 1, Ch. 135, L. 1979.

History: En. Sec. 4339, Pol. C. 1895; re-en. Sec. 2984, Rev. C. 1907; re-en. Sec. 4748, R.C.M. 1921; re-en. Sec. 4748, R.C.M. 1935; R.C.M. 1947, 16-2426.

7-6-2217. Administration of relief received from federal agencies. In any county where aid is received from the reconstruction finance corporation or any other similar agencies, the county commissioners of such county shall be authorized to employ the necessary help and incur such expenses as are necessary in the administration of such relief; and in so doing the board may appropriate such funds as are necessary from the general fund of said county. Such appropriation shall be held and deemed legal and valid notwithstanding the provisions of the budget act.

History: En. Sec. 1, Ch. 44, L. 1933; re-en. Sec. 4520.1, R.C.M. 1935; R.C.M. 1947, 16-1162.

7-6-2218. Appropriation of state and federal money by county. (1) The board of county commissioners of any county in Montana shall have the power and authority to appropriate, by formal resolution, money received from the federal or state government, regardless of the time the money is received. The expenditure of said funds shall be according to federal requirements specified in the federal act or state requirements specified in the state legislation. The money appropriated under this section may include federal revenue sharing funds granted to Montana conservation districts organized under Title 76, chapter 15.

(2) The resolution shall state the source of the money, the expenditure program for the funds, and the effective date of the appropriation.

(3) (a) Subject to restrictions in federal or state law granting federal or state funds, in addition to appropriations for county use, an appropriation may be made under this section to the following entities for that entity's governmental purpose:

(i) utility districts authorized in Title 7, chapter 13;

(ii) fire services authorized in Title 7, chapter 33.

(b) If the entity receiving an appropriation under subsection (3)(a) provides a service that is less than countywide, the appropriation resolution shall require that the entity repay the county the amount of the appropriation. The appropriation resolution may provide any method of repayment, except that full repayment must be made within 5 years of the date of the appropriation resolution. The appropriation resolution may require that interest be paid on the appropriation.

History: En. 16-1185 by Sec. 1, Ch. 70, L. 1974; amd. Sec. 1, Ch. 75, L. 1975; R.C.M. 1947, 16-1185; amd. Sec. 1, Ch. 19, L. 1983.

7-6-2219. Authorization to establish capital improvement fund. The governing body of any county in Montana may establish a capital improvement fund for the replacement and acquisition of property, plant, or equipment costing in excess of $5,000 with a life expectancy of 5 years or more, provided a capital improvement program has been formally adopted by said governing body.

History: En. 16-1186 by Sec. 1, Ch. 54, L. 1975; R.C.M. 1947, 16-1186.

7-6-2220. Levy for capital improvement fund. Money for the capital improvement fund is to be derived from the multiple levies authorized by statute and appropriated to the capital improvement fund. However, no more than 10% of the money derived from any one levy may be appropriated to the capital improvement fund.

History: En. 16-1187 by Sec. 2, Ch. 54, L. 1975; R.C.M. 1947, 16-1187.

7-6-2221. Limitations on capital improvement fund. The capital improvement fund may not exceed at any time a competent engineering estimate of the cost of the adopted capital improvement program. Money deposited in the fund must be expended within a 10-year period.

History: En. 16-1188 by Sec. 3, Ch. 54, L. 1975; R.C.M. 1947, 16-1188; amd. Sec. 6, Ch. 252, L. 1979.

7-6-2222 and 7-6-2223 reserved.

7-6-2224. Long-short cash account. A governing body of a county may create a cash over or short account consistent with accepted accounting practice.

History: En. Sec. 1, Ch. 204, L. 1993.

7-6-2225. County hard-rock mine trust reserve account — expenditure restrictions. (1) The governing body of a county receiving an allocation under 15-37-117(1)(f) shall establish a county hard-rock mine trust reserve account.

(2) Money received by a county pursuant to 15-37-117 or 90-6-331 must remain in the account and may not be appropriated by the governing body until:

(a) a mining operation has permanently ceased all mining related activity; or

(b) the number of persons employed full-time in mining activities by the mining operation is less than one-half of the average number of persons employed full-time in mining activities by the mining operation during the immediately preceding 5-year period.

(3) If the circumstances described in subsection (2)(a) or (2)(b) occur, the governing body of the county must allocate at least one-third of the funds proportionally to affected high school districts and elementary school districts in the county, and may use the remaining funds in the account to:

(a) pay for outstanding capital project bonds or other expenses incurred prior to the end of mining activity or the reduction in the mining work force described in subsection (2)(b);

(b) decrease property tax mill levies that are directly caused by the cessation or reduction of mining activity;

(c) promote diversification and development of the economic base within the jurisdiction of a local government unit;

(d) attract new industry to the impact area;

(e) provide cash incentives for expanding the employment base of the area impacted by the changes in mining activity described in subsection (2); or

(f) provide grants or loans to other local government jurisdictions to assist with impacts caused by the changes in mining activity described in subsection (2).

(4) Except as provided in subsection (3)(b), money held in the account may not be considered as cash balance for the purpose of reducing mill levies.

(5) Money in the reserve account must be invested as provided by law. Interest and income from the investment of funds in the account must be credited to the account.

History: **En. Sec. 9, Ch. 672, L. 1989; amd. Sec. 5, Ch. 577, L. 1995.**

Compiler's Comments

1995 Amendment: Chapter 577 in (1) substituted reference to 15-37-117(1)(f) for reference to 15-37-117(1)(d); and made minor changes in style. Amendment effective July 1, 1995.

7-6-2226. Metal mines tax reserve account. (1) The governing body of a county receiving tax collections under 15-37-117(1)(f) may establish a metal mines tax reserve account to be used to hold the collections. The governing body may hold money in the account for any time period considered appropriate by the governing body. Money held in the account may not be considered as cash balance for the purpose of reducing mill levies.

(2) Money may be expended from the account for any purpose provided by law.

(3) Money in the account must be invested as provided by law. Interest and income from the investment of the metal mines tax reserve account must be credited to the account.

History: **En. Sec. 17, Ch. 672, L. 1989; amd. Sec. 6, Ch. 577, L. 1995.**

Compiler's Comments

1995 Amendment: Chapter 577 in (1) substituted reference to 15-37-117(1)(f) for reference to 15-37-117(1)(d); and made minor changes in style. Amendment effective July 1, 1995.

Part 23
County Budget Law

Part Cross-References

"Drake Amendment" — state to provide funding for mandated duties, 1-2-112.

7-6-2301. Construction of part. This part shall not be construed to create any new fund or funds or to authorize a levy to be made for any fund in excess of the limitation now prescribed by existing law or acts amendatory thereof.

History: **En. Sec. 9, Ch. 148, L. 1929; re-en. Sec. 4613.9, R.C.M. 1935; R.C.M. 1947, 16-1910; amd. Sec. 29, Ch. 575, L. 1981.**

7-6-2302. Role of department of commerce — exception. (1) The department of commerce shall make rules and classifications and prescribe forms necessary to carry out the provisions of this part, to define what expenditures are chargeable to each budget account, and to establish accounting and cost systems necessary to provide accurate budget information.

(2) This section does not apply to a county that has adopted the alternative accounting method provided for in Title 7, chapter 6, part 6.

History: En. Sec. 8, Ch. 148, L. 1929; re-en. Sec. 4613.8, R.C.M. 1935; amd. Sec. 67, Ch. 348, L. 1974; amd. Sec. 26, Ch. 213, L. 1975; R.C.M. 1947, 16-1909; amd. Sec. 7, Ch. 252, L. 1979; amd. Sec. 7, Ch. 274, L. 1981; amd. Sec. 30, Ch. 575, L. 1981; amd. Sec. 1, Ch. 287, L. 1983; amd. Sec. 16, Ch. 430, L. 1995.

Compiler's Comments

1995 Amendment: Chapter 430 inserted (2) providing exception for county that has adopted alternative accounting method provided in Title 7, chapter 6, part 6; and made minor changes in style. Amendment effective April 13, 1995.

7-6-2303. Violations. Any person violating any of the provisions of this part shall be guilty of a misdemeanor.

History: En. Sec. 10, Ch. 148, L. 1929; re-en. Sec. 4613.10, R.C.M. 1935; R.C.M. 1947, 16-1911; amd. Sec. 31, Ch. 575, L. 1981.

Cross-References

Misdemeanor, 46-18-212.

7-6-2304 through 7-6-2310 reserved.

7-6-2311. Filing of estimate of revenues and expenses with county clerk — exception. (1) Before June 1 each year the county clerk and recorder shall notify in writing each county official in charge of an office, department, service, institution, or county-funded district court program of the county to file with the county clerk and recorder, before June 10, detailed and itemized estimates, both of the probable revenue from sources other than taxation and of all expenditures required by the office, department, service, or institution for the next fiscal year.

(2) (a) The county commissioners shall submit to the county clerk and recorder the estimate of expenditures for all purposes for the board and a detailed statement showing all new road and bridge construction to be financed from county road and bridge funds, from any special road or bridge fund, from any special highway fund, and from bond issues issued or authorized for the next fiscal year, together with the cost of that construction as computed by the county surveyor or, if for construction in charge of a special engineer, then by that engineer. The county commissioners shall also submit to the county clerk and recorder detailed estimates of all expenditures for construction or improvement purposes proposed to be made from the proceeds of bond issues not yet authorized and from the proceeds of tax levies that are required to be approved at an election to be held.

(b) The county surveyor and any special engineer shall prepare the estimates of cost of road and bridge construction for the county commissioners. They shall also submit a similar statement showing road and bridge maintenance expenditures as nearly as can be estimated.

(c) The county treasurer shall prepare the estimates for interest and debt reduction.

(d) The county clerk and recorder shall prepare all other estimates that properly fall within the duties of the office.

(3) The estimates required in this section must be submitted on forms provided by the county clerk and recorder and prescribed by the department

of commerce. The forms may only be varied or departed from with permission and approval of that department. Each of the officials shall file the estimates within the time and in the manner provided in the form and notice.

(4) In the absence or disability of an official, the duties required by this section or 7-6-2312 devolve upon the official or employee in charge of the office, department, service, or institution.

(5) This section does not apply to a county that has adopted the alternative accounting method provided for in Title 7, chapter 6, part 6.

History: En. Sec. 1, Ch. 148, L. 1929; re-en. Sec. 4613.1, R.C.M. 1935; amd. Sec. 1, Ch. 48, L. 1947; amd. Sec. 63, Ch. 348, L. 1974; amd. Sec. 22, Ch. 213, L. 1975; R.C.M. 1947, 16-1901(part); amd. Sec. 1, Ch. 405, L. 1979; amd. Sec. 7, Ch. 274, L. 1981; amd. Sec. 1, Ch. 287, L. 1983; amd. Sec. 17, Ch. 430, L. 1995.

Compiler's Comments

1995 Amendment: Chapter 430 inserted (5) providing exception for county that has adopted alternative accounting method provided in Title 7, chapter 6, part 6; and made minor changes in style. Amendment effective April 13, 1995.

Cross-References

Road and bridge funds, Title 7, ch. 14, part 25.

7-6-2312. Penalty for noncompliance with filing requirements — exception. (1) The county clerk shall withhold as a penalty from the salary of each official failing or refusing to file the estimates, $10 for each day of delay. The total penalty against any official may not exceed $50 in 1 year.

(2) The notice provided for in 7-6-2311 must contain a copy of this penalty clause.

(3) This section does not apply to a county that has adopted the alternative accounting method provided for in Title 7, chapter 6, part 6.

History: En. Sec. 1, Ch. 148, L. 1929; re-en. Sec. 4613.1, R.C.M. 1935; amd. Sec. 1, Ch. 48, L. 1947; amd. Sec. 63, Ch. 348, L. 1974; amd. Sec. 22, Ch. 213, L. 1975; R.C.M. 1947, 16-1901(part); amd. Sec. 18, Ch. 430, L. 1995.

Compiler's Comments

1995 Amendment: Chapter 430 inserted (3) providing exception for county that has adopted alternative accounting method provided in Title 7, chapter 6, part 6; and made minor changes in style. Amendment effective April 13, 1995.

7-6-2313. Preparation of expenditure program and information on sources of revenue. (1) From those estimates the county clerk and recorder shall prepare a tabulation showing the complete expenditure program of the county for the current fiscal year and the sources of revenue by which it is to be financed.

(2) The tabulation shall set forth:

(a) the estimated receipts from all sources other than taxation for each office, department, service, institution, or district court program funded by the county for the current fiscal year;

(b) the actual receipts for the last completed fiscal year;

(c) the surplus or unencumbered treasury balances at the close of that last fiscal year;

(d) the amount necessary to be raised by taxation;

(e) the estimated expenditure for each office, department, service, institution, or district court program funded by the county for the current fiscal year;

(f) the actual expenditures for the last completed fiscal year;

(g) all contracts or other obligations which will affect the current year revenues;

(h) the total amount of emergency warrants issued during the preceding fiscal year, with the amount issued for each emergency and the amount issued against each fund.

History: **En. Sec. 2, Ch. 148, L. 1929; re-en. Sec. 4613.2, R.C.M. 1935; amd. Sec. 64, Ch. 348, L. 1974; amd. Sec. 23, Ch. 213, L. 1975; R.C.M. 1947, 16-1902(1), (4); amd. Sec. 2, Ch. 405, L. 1979.**

Cross-References

Emergency warrants, 7-6-2341 through 7-6-2345.

7-6-2314. Classification of estimates, appropriations, and expenditures — exception. (1) In the tabulation required by 7-6-2313, the estimates, appropriations, and expenditures must be classified as:

(a) salaries and wages;
(b) maintenance and operation;
(c) capital outlay;
(d) interest and debt redemption;
(e) miscellaneous; and
(f) expenditures proposed to be made from bond issues not yet authorized or from the proceeds of a tax levy or levies that are required to be submitted to and approved at an election to be held later.

(2) (a) Within the general class of salaries and wages, each salary must be set forth separately, together with the title or position of the recipient. An unitemized appropriation may be made to cover the expenses of special deputies or assistants in any office where the services of the special deputies or assistants may be required during a part of the fiscal year only. Wages for day labor may be given in totals by designating the general purpose or object for which the expenditure is to be made, but the proposed rate per day for each class or kind of labor must be set forth.

(b) Expenditures under the general class of maintenance and operation must be classified according to a standard classification to be established by the department of commerce.

(c) Expenditures for capital outlay must set forth and describe each object of expenditure separately.

(d) Under the general class of interest and debt redemption, proposed expenditures for interest and for redemption of principal must be set forth separately for each series or issue of bonds, and warrant interest and redemption requirements must be set forth in a similar manner.

(e) Under the general class of miscellaneous, expenditures for all purposes not listed in or that cannot properly be assigned to any of the general classes must be set forth and itemized in detail.

(3) This section does not apply to a county that has adopted the alternative accounting method provided for in Title 7, chapter 6, part 6.

History: **En. Sec. 2, Ch. 148, L. 1929; re-en. Sec. 4613.2, R.C.M. 1935; amd. Sec. 64, Ch. 348, L. 1974; amd. Sec. 23, Ch. 213, L. 1975; R.C.M. 1947, 16-1902(2), (3); amd. Sec. 7, Ch. 274, L. 1981; amd. Sec. 1, Ch. 287, L. 1983; amd. Sec. 19, Ch. 430, L. 1995.**

Compiler's Comments

1995 Amendment: Chapter 430 inserted (3) providing exception for county that has adopted alternative accounting method provided in Title 7, chapter 6, part 6; and made minor changes in style. Amendment effective April 13, 1995.

7-6-2315. Consideration of tabulation by county commissioners — exception. (1) The tabulation must be submitted to the county commissioners by the county clerk and recorder on or before the third Monday of July.

(2) Upon receipt, the board of county commissioners shall immediately consider the budget in detail and shall, on or before the fourth Monday of July, make any revisions, reductions, additions, or changes that the board considers advisable. The tabulation, with any revisions, reductions, additions, or changes, is the county proposed budget for the fiscal year which it is intended to cover.

(3) This section does not apply to a county that has adopted the alternative accounting method provided for in Title 7, chapter 6, part 6.

History: En. Sec. 3, Ch. 148, L. 1929; re-en. Sec. 4613.3, R.C.M. 1935; amd. Sec. 2, Ch. 48, L. 1947; amd. Sec. 65, Ch. 348, L. 1974; amd. Sec. 24, Ch. 213, L. 1975; R.C.M. 1947, 16-1903(part); amd. Sec. 7, Ch. 274, L. 1981; amd. Sec. 1, Ch. 287, L. 1983; amd. Sec. 1, Ch. 201, L. 1985; amd. Sec. 1, Ch. 206, L. 1985; amd. Sec. 20, Ch. 430, L. 1995.

Compiler's Comments

1995 Amendment: Chapter 430 inserted (3) providing exception for county that has adopted alternative accounting method provided in Title 7, chapter 6, part 6; and made minor changes in style. Amendment effective April 13, 1995.

7-6-2316. Notice of hearing on county proposed budget — exception. (1) The board of county commissioners shall cause a notice to be published stating that:

(a) the board has completed its county proposed budget for the current fiscal year;

(b) the budget is open to inspection in the office of the county clerk and recorder;

(c) the board will meet to fix the final budget and make appropriations, stating the date, time, and place of the meeting; and

(d) any taxpayer or resident of the county may appear and be heard for or against any part of the budget.

(2) The notice must be published two times, once each week, in a newspaper of general circulation in the county.

(3) This section does not apply to a county that has adopted the alternative accounting method provided for in Title 7, chapter 6, part 6.

History: En. Sec. 3, Ch. 148, L. 1929; re-en. Sec. 4613.3, R.C.M. 1935; amd. Sec. 2, Ch. 48, L. 1947; amd. Sec. 65, Ch. 348, L. 1974; amd. Sec. 24, Ch. 213, L. 1975; R.C.M. 1947, 16-1903(part); amd. Sec. 8, Ch. 252, L. 1979; amd. Sec. 2, Ch. 206, L. 1985; amd. Sec. 1, Ch. 84, L. 1989; amd. Sec. 21, Ch. 430, L. 1995.

Compiler's Comments

1995 Amendment: Chapter 430 inserted (3) providing exception to notice requirement for county that has adopted alternative accounting method provided in Title 7, chapter 6, part 6; and made minor changes in style. Amendment effective April 13, 1995.

Cross-References

Newspaper of general circulation — publishing notice, 7-5-2411.

7-6-2317. Hearing on county proposed budget — exception. (1) At least 3 days prior to the adoption of the final budget, the county commissioners shall meet at the time and place designated in the notice provided for in 7-6-2316, at which time any taxpayer or resident of the county may appear and be heard for or against any part of the budget.

(2) The hearing must be continued from day to day and must be concluded and the budget approved and adopted on or before the second Monday in August, before the fixing of the tax levies by the board.

(3) This section does not apply to a county that has adopted the alternative accounting method provided for in Title 7, chapter 6, part 6.

History: En. Sec. 4, Ch. 148, L. 1929; re-en. Sec. 4613.4, R.C.M. 1935; amd. Sec. 1, Ch. 98, L. 1937; amd. Sec. 1, Ch. 220, L. 1963; amd. Sec. 1, Ch. 178, L. 1969; amd. Sec. 1, Ch. 5, 2nd Ex. L. 1971; amd. Sec. 1, Ch. 261, L. 1974; amd. Sec. 66, Ch. 348, L. 1974; amd. Sec. 25, Ch. 213, L. 1975; R.C.M. 1947, 16-1904(1); amd. Sec. 9, Ch. 252, L. 1979; amd. Sec. 2, Ch. 84, L. 1989; amd. Sec. 22, Ch. 430, L. 1995.

Compiler's Comments

1995 Amendment: Chapter 430 inserted (3) providing exception to meeting requirement for county that has adopted alternative accounting method provided in Title 7, chapter 6, part 6; and made minor changes in style. Amendment effective April 13, 1995.

7-6-2318. Determination of projected fund cash flow following hearing — exception. (1) Upon the conclusion of the hearing, the board shall first determine the amount estimated to accrue to each fund during the fiscal year from all sources except the taxation of property. In so doing, the board may not include any amount that it is anticipated may be received during the fiscal year from the payment of taxes that became delinquent during a preceding fiscal year.

(2) The board shall then determine separately the amount appropriated for and authorized to be spent for each item in the budget and shall specify the fund or funds against which warrants are to be drawn and issued for each item in the budget and shall specify the fund or funds against which warrants are to be drawn for the expenditures authorized. There may not be added to the amount to be appropriated and authorized to be spent for an item or to the total amount appropriated and authorized to be spent from any fund any amount or percentage because of anticipated loss of revenue by reason of the nonpayment of taxes levied for that fiscal year. The total expenditures authorized to be made from any fund, including the reserve added to them, may not exceed the aggregate of:

(a) the cash balance in the fund at the close of the preceding fiscal year;

(b) the amount of estimated revenues to accrue to the fund; and

(c) the amount which may be raised for the fund by a lawful tax levy during the fiscal year.

(3) This section does not apply to a county that has adopted the alternative accounting method provided for in Title 7, chapter 6, part 6.

History: En. Sec. 4, Ch. 148, L. 1929; re-en. Sec. 4613.4, R.C.M. 1935; amd. Sec. 1, Ch. 98, L. 1937; amd. Sec. 1, Ch. 220, L. 1963; amd. Sec. 1, Ch. 178, L. 1969; amd. Sec. 1, Ch. 5, 2nd Ex. L. 1971; amd. Sec. 1, Ch. 261, L. 1974; amd. Sec. 66, Ch. 348, L. 1974; amd. Sec. 25, Ch. 213, L. 1975; R.C.M. 1947, 16-1904(2); amd. Sec. 23, Ch. 430, L. 1995.

Compiler's Comments

1995 Amendment: Chapter 430 inserted (3) providing exception for county that has adopted alternative accounting method provided in Title 7, chapter 6, part 6; and made minor changes in style. Amendment effective April 13, 1995.

7-6-2319. Determination of fund requirements to be met by tax levy — exception. (1) Following the determinations required by 7-6-2318, the board shall determine the amount to be raised by tax levy for each fund by adding the cash balance in the fund at the close of the preceding fiscal year and the amount of the estimated revenue to accrue to the fund during the current fiscal year. It shall then deduct the total amount obtained from the total amount of the appropriations and authorized expenditures from the fund as determined by the board. The amount remaining is the amount necessary to be raised for the fund by tax levy during the current fiscal year.

(2) The board may add to the amount necessary to be raised for any fund by tax levy during the current fiscal year an additional amount as a reserve to meet expenditures to be made from the fund during the months of July to November of the next fiscal year. The amount that may be added to any fund as the reserve may not exceed one-third of the total amount appropriated and authorized to be spent from the fund during the current fiscal year, after deducting from the amount of the appropriations and authorized expenditures the total amount appropriated and authorized to be spent for election expenses and payment of emergency warrants.

(3) The total amount to be raised by tax levy for any fund during the current fiscal year, including the amount of the reserve and any amount for payment of election expenses and emergency warrants, may not exceed the total amount which may be raised for the fund by a tax levy which does not exceed the maximum levy permitted by law to be made for the fund.

(4) This section does not apply to a county that has adopted the alternative accounting method provided for in Title 7, chapter 6, part 6.

History: En. Sec. 4, Ch. 148, L. 1929; re-en. Sec. 4613.4, R.C.M. 1935; amd. Sec. 1, Ch. 98, L. 1937; amd. Sec. 1, Ch. 220, L. 1963; amd. Sec. 1, Ch. 178, L. 1969; amd. Sec. 1, Ch. 5, 2nd Ex. L. 1971; amd. Sec. 1, Ch. 261, L. 1974; amd. Sec. 66, Ch. 348, L. 1974; amd. Sec. 25, Ch. 213, L. 1975; R.C.M. 1947, 16-1904(3); amd. Sec. 24, Ch. 430, L. 1995.

Compiler's Comments

1995 Amendment: Chapter 430 inserted (4) providing exception for county that has adopted alternative accounting method provided in Title 7, chapter 6, part 6; and made minor changes in style. Amendment effective April 13, 1995.

7-6-2320. Final budget — approval, adoption, and amendment — exception. (1) The budget as finally determined, in addition to setting out separately each item for which an appropriation or expenditure is authorized and the fund out of which it is to be paid, must set out:

(a) the total amount appropriated and authorized to be spent from each fund;

(b) the cash balance in the fund at the close of the preceding fiscal year;

(c) the amount estimated to accrue to the fund from sources other than taxation;

(d) the reserve for the next fiscal year; and

(e) the amount necessary to be raised for each fund by tax levy during the current fiscal year.

(2) The board shall then by resolution approve and adopt the budget as finally determined and enter the budget at length in the official minutes of the board.

(3) (a) Subject to compliance with the procedures set forth in subsection (4), the board may approve and adopt a resolution amending a final budget when:

(i) shortfalls in anticipated and budgeted revenues occur that, unless reductions in appropriations are made, will result in expenditures for the year exceeding actual revenues and cash balances available for the year; or

(ii) savings result from unanticipated adjustments in projected expenditures.

(b) Amended appropriations must be classified as:

(i) salaries and wages;

(ii) maintenance and operation;

(iii) capital outlay;

(iv) interest and debt redemption; or

(v) miscellaneous.

(4) Prior to amending a final budget, the board shall:

(a) hold a public hearing on the proposed amendments at least 7 days prior to a vote on the resolution amending the budget; and

(b) publish notice, at least once, in a newspaper of general circulation in the county at least 6 but not more than 16 days before the hearing on the budget amendments. The published notice must specify the date, time, place, and subject of the hearing.

(5) This section does not apply to a county that has adopted the alternative accounting method provided for in Title 7, chapter 6, part 6.

History: En. Sec. 4, Ch. 148, L. 1929; re-en. Sec. 4613.4, R.C.M. 1935; amd. Sec. 1, Ch. 98, L. 1937; amd. Sec. 1, Ch. 220, L. 1963; amd. Sec. 1, Ch. 178, L. 1969; amd. Sec. 1, Ch. 5, 2nd Ex. L. 1971; amd. Sec. 1, Ch. 261, L. 1974; amd. Sec. 66, Ch. 348, L. 1974; amd. Sec. 25, Ch. 213, L. 1975; R.C.M. 1947, 16-1904(5); amd. Sec. 1, Ch. 702, L. 1983; amd. Sec. 25, Ch. 430, L. 1995.

Compiler's Comments

1995 Amendment: Chapter 430 inserted (5) providing exception for county that has adopted alternative accounting method provided in Title 7, chapter 6, part 6; and made minor changes in style. Amendment effective April 13, 1995.

Cross-References

Official county newspaper, 7-5-2411.

7-6-2321. Fixing of tax levy — exception. (1) On or before the second Monday in August and after the approval and adoption of the final budget, the board of county commissioners shall fix the tax levy for each fund at a rate which will raise the amount set out in the budget as the amount necessary to be raised by tax levy for the fund during the current fiscal year. The taxable valuation of the county for the current fiscal year must be the basis for determining the amount of the tax levy for each fund. Each tax levy must be at a rate not higher than is required on that basis, without including any amount for anticipated tax delinquency, to produce the amount set out in the budget, without including any amount for anticipated tax delinquency, that is the amount to be raised by tax levy.

(2) The tax levy must be made in the manner provided by 15-10-201.

(3) This section does not apply to a county that has adopted the alternative accounting method provided for in Title 7, chapter 6, part 6.

History: En. Sec. 4, Ch. 148, L. 1929; re-en. Sec. 4613.4, R.C.M. 1935; amd. Sec. 1, Ch. 98, L. 1937; amd. Sec. 1, Ch. 220, L. 1963; amd. Sec. 1, Ch. 178, L. 1969; amd. Sec. 1, Ch. 5, 2nd Ex. L. 1971; amd. Sec. 1, Ch. 261, L. 1974; amd. Sec. 66, Ch. 348, L. 1974; amd. Sec. 25, Ch. 213, L. 1975; R.C.M. 1947, 16-1904(6); amd. Sec. 1, Ch. 726, L. 1985; amd. Sec. 3, Ch. 26, Sp. L. June 1986; amd. Sec. 3, Ch. 84, L. 1989; amd. Sec. 26, Ch. 430, L. 1995.

Compiler's Comments

1995 Amendment: Chapter 430 inserted (3) providing exception from requirement to fix tax levy for county that has adopted alternative accounting method provided in Title 7, chapter 6, part 6; and made minor changes in style. Amendment effective April 13, 1995.

Cross-References

Payment of taxes under protest — payment to county after first year, 15-1-402.

Temporary authority to exceed mill levy limitations, 15-7-122.

Assessment book delivery to County Clerk, 15-8-705.

Statement of tax levies, Title 15, ch. 10, part 2.

7-6-2322. Budget and tax levies to be supplied to department of commerce. (1) The county clerk and recorder shall, not later than September 15, forward a full and detailed copy of the final budget, together with the tax levies, to the department of commerce.

(2) If a county clerk and recorder fails to forward a copy of the budget to the department within that time, that department shall, before October 1, notify the board of county commissioners of the county that a copy of the budget has not been forwarded by the county clerk and recorder. The board must then withhold the county clerk and recorder's salary for September until the county clerk and recorder files with the board a receipt from the department showing the receipt of a copy.

History: En. Sec. 4, Ch. 148, L. 1929; re-en. Sec. 4613.4, R.C.M. 1935; amd. Sec. 1, Ch. 98, L. 1937; amd. Sec. 1, Ch. 220, L. 1963; amd. Sec. 1, Ch. 178, L. 1969; amd. Sec. 1, Ch. 5, 2nd Ex. L. 1971; amd. Sec. 1, Ch. 261, L. 1974; amd. Sec. 66, Ch. 348, L. 1974; amd. Sec. 25, Ch. 213, L. 1975; R.C.M. 1947, 16-1904(7); amd. Sec. 7, Ch. 274, L. 1981; amd. Sec. 1, Ch. 287, L. 1983.

7-6-2323. Effect of exceeding budget appropriations — personal liability. (1) Expenditures made, liabilities incurred, or warrants issued in excess of a department's total budget appropriation, as originally determined or as later revised by transfer as provided in this part, are not a liability of the county, but the official authorizing or incurring the expenditure is liable for it personally and upon his official bond.

(2) (a) The board of county commissioners may not approve any claim and the county clerk and recorder may not issue a warrant for any expenditure in excess of a department's total budget appropriation, as finally adopted or as revised under the provisions of this part, except upon an order of a court of competent jurisdiction or for an emergency as provided in this part. A department official approving any claim in excess of a budget appropriation, except as provided in this section, shall forfeit to the county the amount of the claim.

(b) The amount forfeited under subsection (2)(a) must be recovered in an action against the responsible official and the surety on his official bond. It is the duty of the county attorney of the county to bring an action for recovery in the name of the county.

History: En. Sec. 5, Ch. 148, L. 1929; re-en. Sec. 4613.5, R.C.M. 1935; R.C.M. 1947, 16-1906(part); amd. Sec. 1, Ch. 230, L. 1987; amd. Sec. 1, Ch. 194, L. 1991.

Cross-References

County Attorney to collect money due county, 7-4-2713, 7-4-2714.

7-6-2324. Limitations on appropriations after budget adopted — exception. (1) The estimates of expenditures, itemized and classified as required in 7-6-2313 and 7-6-2314 and as finally fixed and adopted and as may be amended as provided in 7-6-2320 by the board of county commissioners, constitutes the appropriations for the county for the fiscal year intended to be covered by the estimates.

(2) Except as provided in 3-5-404, 7-6-2325, and 7-31-2101, the county commissioners and every other county official, including judges of the district

court, is limited in the making of expenditures or incurring of liabilities to the amount of the detailed appropriations and classifications, respectively.

(3) This section does not apply to a county that has adopted the alternative accounting method provided for in Title 7, chapter 6, part 6.

History: En. Sec. 5, Ch. 148, L. 1929; re-en. Sec. 4613.5, R.C.M. 1935; R.C.M. 1947, 16-1906(part); amd. Sec. 1, Ch. 275, L. 1979; amd. Sec. 2, Ch. 702, L. 1983; amd. Sec. 27, Ch. 430, L. 1995.

Compiler's Comments

1995 Amendment: Chapter 430 inserted (3) providing exception from appropriation limits for county that has adopted alternative accounting method provided in Title 7, chapter 6, part 6; and made minor changes in style. Amendment effective April 13, 1995.

7-6-2325. Transfer of appropriations within and among expenditure classes. (1) Upon a resolution adopted by the board of county commissioners at a regular or special meeting and entered upon its minutes, transfers or revisions in the general budget system within the classifications set forth in 7-6-2314(1)(a) through (1)(c) may be made, provided that a salary may not be increased above the amount appropriated.

(2) This section does not apply to a county that has adopted the alternative accounting method provided for in Title 7, chapter 6, part 6.

History: En. Sec. 5, Ch. 148, L. 1929; re-en. Sec. 4613.5, R.C.M. 1935; R.C.M. 1947, 16-1906(part); amd. Sec. 1, Ch. 484, L. 1985; amd. Sec. 28, Ch. 430, L. 1995.

Compiler's Comments

1995 Amendment: Chapter 430 inserted (2) providing exception for county that has adopted alternative accounting method provided in Title 7, chapter 6, part 6; and made minor changes in style. Amendment effective April 13, 1995.

7-6-2326. Transfer of cash balance in fund at close of fiscal year. (1) After a public hearing, if the cash balance remaining at the end of a fiscal year in any of the several county funds except the school fund, exceeds the amount to be budgeted to that fund, the excess may be transferred to other funds as the county commissioners consider to be in the best interest of the county.

(2) Notice of the hearing must be given as provided in 7-1-2121 and must state generally the purpose and proposed use of the funds.

History: En. Sec. 4, Ch. 148, L. 1929; re-en. Sec. 4613.4, R.C.M. 1935; amd. Sec. 1, Ch. 98, L. 1937; amd. Sec. 1, Ch. 220, L. 1963; amd. Sec. 1, Ch. 178, L. 1969; amd. Sec. 1, Ch. 5, 2nd Ex. L. 1971; amd. Sec. 1, Ch. 261, L. 1974; amd. Sec. 66, Ch. 348, L. 1974; amd. Sec. 25, Ch. 213, L. 1975; R.C.M. 1947, 16-1904(4); amd. Sec. 7, Ch. 349, L. 1985.

7-6-2327. Use of bond proceeds and borrowed money. (1) Money received from borrowing shall be used for no other purpose than that for which borrowed, except that if any surplus remains after the accomplishment of the purpose for which borrowed, it shall be used to redeem the county debt.

(2) Where any budget shall contain an expenditure program to be financed from a bond issue to be authorized thereafter, no expenditure shall be made or obligation incurred thereunder until such bonds have been duly authorized and the proceeds are available.

History: En. Sec. 5, Ch. 148, L. 1929; re-en. Sec. 4613.5, R.C.M. 1935; R.C.M. 1947, 16-1906(part).

7-6-2328. Restriction on tax-financed expenditures if voter approval of tax levy required. Where any expenditure program is to be financed from a tax levy required to be authorized and approved at an election, no expenditure shall be made or obligation incurred thereunder until such levy is so authorized and approved.

History: En. Sec. 5, Ch. 148, L. 1929; re-en. Sec. 4613.5, R.C.M. 1935; R.C.M. 1947, 16-1906(part).

7-6-2329. Procedure when unpaid and outstanding warrants exist at end of fiscal year. (1) When at the end of any fiscal year any county has outstanding registered emergency warrants against any fund issued by reason of any emergency budget or budgets and is without sufficient cash in such fund to pay the same with interest thereon, the board of county commissioners must, in the annual budget for such fund for the immediately following fiscal year, make an appropriation sufficient to pay such warrants with the interest thereon.

(2) When at the end of any fiscal year any county has warrants outstanding and registered against any fund, other than warrants issued by reason of any emergency budget or budgets, and is without sufficient cash in such fund to pay the same with interest thereon, the board must, in the annual budget for such fund for the immediately following fiscal year, make an appropriation to pay such warrants or a substantial part thereof with the interest thereon. The amount of such appropriation shall be fixed and determined by the board, but must, in any event, be at least 10% of the amount which might be collected by a maximum levy for such fund if the amount of such outstanding and registered warrants, with interest thereon, equals or exceeds such amount.

(3) None of the provisions of this section shall be construed as authorizing a levy to be made for any fund in excess of the limitation prescribed by existing law or acts hereafter enacted amendatory thereof.

History: En. Sec. 1, Ch. 170, L. 1943; re-en. Sec. 4613.4A, R.C.M. 1935; R.C.M. 1947, 16-1905.

7-6-2330. Lapse of appropriation. (1) Subject to the provisions of subsection (2), all appropriations, other than appropriations for uncompleted improvements in progress of construction, lapse at the end of the fiscal year.

(2) (a) The appropriation accounts must remain open for a period of 30 days after the end of the fiscal year for the payment of claims incurred against the appropriations prior to the close of the fiscal year and remaining unpaid. After the period has expired, all appropriations, except as otherwise provided regarding uncompleted improvements, become null and void, and any lawful claim presented after expiration against any appropriation must be provided for in the ensuing budget.

(b) Subsection (2)(a) does not apply to a county that has adopted the alternative accounting method provided for in Title 7, chapter 6, part 6.

History: En. Sec. 6, Ch. 148, L. 1929; re-en. Sec. 4613.6, R.C.M. 1935; amd. Sec. 2, Ch. 170, L. 1943; amd. Sec. 1, Ch. 159, L. 1953; amd. Sec. 1, Ch. 148, L. 1955; amd. Sec. 1, Ch. 194, L. 1963; R.C.M. 1947, 16-1907(8); amd. Sec. 29, Ch. 430, L. 1995.

Compiler's Comments

1995 Amendment: Chapter 430 inserted (2)(b) providing exception for county that has adopted alternative accounting method provided in Title 7, chapter 6, part 6; and made minor changes in style. Amendment effective April 13, 1995.

7-6-2331. Clerk's report concerning expenditures, liabilities, and appropriations — auditor's report — exception. (1) Within 4 working days after receipt of the treasurer's monthly report, the county clerk and recorder shall submit to the board of county commissioners a report showing the expenditures and liabilities against each separate budget appropriation incurred during the preceding calendar month and like information for the whole of the fiscal year to the first day of the month in which the report is made, together with the unexpended balance of each appropriation. The clerk and recorder shall also set forth the receipts from taxes and in detail the receipts from all other sources by each fund for the same period.

(2) In counties having county auditors, the county auditor, on the last business day of each month, shall furnish the county clerk and recorder with a statement showing the total amount of liabilities incurred against each budget appropriation for which warrants have not been issued up to the close of the business day.

(3) This section does not apply to a county that has adopted the alternative accounting method provided for in Title 7, chapter 6, part 6.

History: En. Sec. 7, Ch. 148, L. 1929; re-en. Sec. 4613.7, R.C.M. 1935; R.C.M. 1947, 16-1908; amd. Sec. 1, Ch. 168, L. 1989; amd. Sec. 30, Ch. 430, L. 1995.

Compiler's Comments

1995 Amendment: Chapter 430 inserted (3) providing exception to reporting requirement for county that has adopted alternative accounting method provided in Title 7, chapter 6, part 6; and made minor changes in style. Amendment effective April 13, 1995.

Cross-References

Duties of Clerk related to finance, 7-6-2202, 7-6-2203.

7-6-2332 through 7-6-2340 reserved.

7-6-2341. Procedure to make expenditures and incur liabilities in case of serious emergencies. Upon the happening of an emergency caused by fire, flood, explosion, storm, earthquake, epidemic, riot, or insurrection; for the immediate preservation of order or of public health; for the restoration of a condition of usefulness of which has been destroyed by accident; for the relief of a stricken community overtaken by calamity; in settlement of approved claims for personal injuries or property damages, exclusive of claims arising from the operation of any public utility owned by the county; or to meet mandatory expenditures required by law, the county commissioners may, upon adoption by unanimous vote of all members present at any meeting (the time and place of which all members shall have had reasonable notice) of a resolution stating the facts constituting the emergency and upon entering the same upon their minutes, make the expenditures or incur the liabilities necessary to meet such emergency without further notice or hearing.

History: En. Sec. 6, Ch. 148, L. 1929; re-en. Sec. 4613.6, R.C.M. 1935; amd. Sec. 2, Ch. 170, L. 1943; amd. Sec. 1, Ch. 159, L. 1953; amd. Sec. 1, Ch. 148, L. 1955; amd. Sec. 1, Ch. 194, L. 1963; R.C.M. 1947, 16-1907(part).

7-6-2342. Procedure to make expenditures and incur liabilities in case of other emergencies. (1) In a public emergency other than those described in 7-6-2341 and which could not reasonably have been foreseen at the time of making the budget, the board of county commissioners, by unanimous vote of the members present at any meeting (the time and place of which all the commissioners shall have had reasonable notice), shall adopt and enter upon their minutes a resolution stating the facts constituting the emergency and the estimated amount of money required to meet the emergency.

(2) The board shall publish the resolution, together with a notice as provided in 7-1-2121 that a public hearing will be held on the resolution.

(3) Any taxpayer or resident of the county may appear at the hearing and be heard for or against the expenditure of money for the alleged emergency.

(4) (a) Upon the conclusion of the hearing, if the commissioners approve the emergency expenditure, they shall make and enter upon their official minutes, by unanimous vote of all of the members of the board present at the meeting, an order setting forth the facts constituting the emergency, together with the amount of expenditure authorized therefor by them. Subject to the limitations of subsection (4)(b), the order is lawful authorization for them to expend such amount, but no more, for such purpose.

(b) No expenditure may be made or liability incurred pursuant to the order until 5 days, exclusive of the day of entry of the order, elapse.

History: En. Sec. 6, Ch. 148, L. 1929; re-en. Sec. 4613.6, R.C.M. 1935; amd. Sec. 2, Ch. 170, L. 1943; amd. Sec. 1, Ch. 159, L. 1953; amd. Sec. 1, Ch. 148, L. 1955; amd. Sec. 1, Ch. 194, L. 1963; R.C.M. 1947, 16-1907(part); amd. Sec. 10, Ch. 252, L. 1979; amd. Sec. 8, Ch. 349, L. 1985.

7-6-2343. Appeal of order for certain emergency expenditures. (1) During the 5-day period provided by 7-6-2342(4)(b), any taxpayer or resident of the county feeling aggrieved by the order issued pursuant to 7-6-2342(4) may appeal therefrom to the district court for such county by filing with the clerk of the court a verified petition, a copy of which has theretofore been served upon the county clerk and recorder of the county as the clerk of the board of county commissioners. The petition shall set forth in detail the objections of the petitioner to the order, giving reasons why the emergency does not exist.

(2) Until final determination of the matter by the court, the service and filing of the petition operates to suspend the emergency order and the authority to make any expenditure or incur any liability thereunder.

(3) Upon the filing of the petition, the court shall immediately fix a time for hearing the petition, which time shall be at the earliest convenient time. At the hearing the court shall hear the matter de novo and may take such testimony as it considers necessary. The court's proceedings shall be summary and informal, and its determination as to whether an emergency such as is contemplated within the meaning and provisions of this part exists or not and whether the expenditure authorized by the order is excessive or not is final.

History: En. Sec. 6, Ch. 148, L. 1929; re-en. Sec. 4613.6, R.C.M. 1935; amd. Sec. 2, Ch. 170, L. 1943; amd. Sec. 1, Ch. 159, L. 1953; amd. Sec. 1, Ch. 148, L. 1955; amd. Sec. 1, Ch. 194, L. 1963; R.C.M. 1947, 16-1907(part); amd. Sec. 11, Ch. 252, L. 1979.

Cross-References

Verification of pleadings, 25-4-203.

Pleadings — generally, M.R.Civ.P. (see Title 25, ch. 20).

7-6-2344. Repealed. Sec. 1, Ch. 104, L. 1995.

History: En. Sec. 6, Ch. 148, L. 1929; re-en. Sec. 4613.6, R.C.M. 1935; amd. Sec. 2, Ch. 170, L. 1943; amd. Sec. 1, Ch. 159, L. 1953; amd. Sec. 1, Ch. 148, L. 1955; amd. Sec. 1, Ch. 194, L. 1963; R.C.M. 1947, 16-1907(part); amd. Sec. 12, Ch. 252, L. 1979; amd. Sec. 387, Ch. 571, L. 1979.

7-6-2345. Use of emergency warrants. (1) All emergency expenditures shall be made by the issuance of emergency warrants drawn against the fund or funds properly chargeable with such expenditures. The county treasurer is authorized and directed to pay such emergency warrants with any money in such fund or funds available for such purpose. If at any time there shall not be sufficient money available in such fund or funds to pay such warrants, then such warrants shall be registered, bear interest, and be called in for payment in the manner provided by law for other county warrants.

(2) The county clerk and recorder shall include in his annual tabulation to be submitted to the board of county commissioners the total amount of emergency warrants issued during the preceding fiscal year. Subject to the provisions of subsection (3), the county commissioners shall, in their tax levies, include a levy for each fund sufficient to raise an amount equal to the total amount of such warrants, if there be any, remaining unpaid at the close of such preceding fiscal year because of insufficient money in such fund to pay the same.

(3) (a) No levy shall be made for any fund in excess of the levy authorized by law to be made therefor.

(b) The board may submit the question of funding such emergency warrants at any election as provided by law, and if at any such election the issuing of such funding bonds be authorized, it shall not then be necessary for any levy to be made for the purpose of paying such emergency warrants.

History: En. Sec. 6, Ch. 148, L. 1929; re-en. Sec. 4613.6, R.C.M. 1935; amd. Sec. 2, Ch. 170, L. 1943; amd. Sec. 1, Ch. 159, L. 1953; amd. Sec. 1, Ch. 148, L. 1955; amd. Sec. 1, Ch. 194, L. 1963; R.C.M. 1947, 16-1907(6), (7).

7-6-2346 and 7-6-2347 reserved.

7-6-2348. Budgets of appointed boards and commissions — exemption for bonds. (1) With respect to tax and fee money, the proposed budget of and the number of mills to be assessed by any board, commission, or other governing entity, except a board of trustees of a public library and an airport authority, appointed by a local government are subject to approval by that local government.

(2) If a board, commission, or other governing entity, other than a port authority created under Title 7, chapter 14, part 11, issues bonds and pledges to the payment of the bonds, taxes, revenue, or fees in accordance with the statutes authorizing the issuance of the bonds, the taxes, revenue, or fees and the levy or appropriation of the taxes, revenue, or fees are not subject to approval by the local government appointing the board, commission, or governing entity.

History: En. Sec. 1, Ch. 347, L. 1991; amd. Sec. 1, Ch. 169, L. 1993.

7-6-2349 and 7-6-2350 reserved.

7-6-2351. District court budget. (1) As soon as the county proposed budget provided for in 7-6-2315 has been agreed upon by the governing body, a copy shall be transmitted to the district court. At any time before the final adoption of the budget, the district court may make recommendations for changes in any part of the budget relating to the court considered necessary for the court to discharge its obligations under the law.

(2) No part of the district court fund may be used for any purpose other than the costs and expenses described in 7-6-2511, and no part may be used for the construction or improvement of any county building.

History: En. Sec. 1, Ch. 692, L. 1979; amd. Sec. 2, Ch. 254, L. 1983; amd. Sec. 3, Ch. 206, L. 1985.

7-6-2352. State grants to district courts — rules. (1) The state shall make grants, to the extent funds are available after expenses provided for in 3-5-901 are funded, to the governing body of a county for the district courts for assistance, as provided in this section.

(2) The governing body of a county may apply to the supreme court administrator for a grant by filing a written request on forms provided by the administrator by August 20 for the previous fiscal year unless the administrator grants a time extension upon request of the county. In its request for a grant, a county must certify that:

(a) all expenditures from the district court fund have been lawfully made;

(b) no transfers from the district court fund have been or will be made to any other fund; and

(c) no expenditures have been made from the district court fund that are not specifically authorized by 7-6-2511 and 7-6-2351.

(3) To the extent funds are available, the state shall award a grant if the county's district court expenditures for the previous fiscal year exceeded the sum of:

(a) the product of the maximum mill levy authorized by law for district court purposes, whether or not assessed, multiplied by the previous year's taxable valuation of the county; and

(b) all revenues, except district court grants, required by law to be deposited in the district court fund for the previous fiscal year.

(4) Eligible court expenditures for grant purposes include all costs of the county associated with the operation and maintenance of the district court, from whatever fund paid, except costs for building and capital items and library maintenance, replacement, and acquisition.

(5) The supreme court administrator shall notify each eligible county as soon as possible of the state's intention to award a grant to that county and the amount of the award.

(6) The grant received by the county must be placed in the district court fund.

(7) If an audit conducted pursuant to 2-7-503 discloses that the recipient received a grant in excess of the amount for which it was eligible, the recipient shall repay the excess to the state. The supreme court administrator shall redistribute any repaid excess amounts to the other counties that received grants from the appropriation from which the overpayment was made, on the same basis as the original awards. A county is not eligible for a district court grant if it owes the state a refund of a prior year's overpayment.

(8) The supreme court administrator, in consultation with the supreme court, shall prescribe rules and forms necessary to effectively administer this section. The administrator may require a county to provide any information considered necessary for the administration of the program.

History: En. Sec. 2, Ch. 692, L. 1979; amd. Sec. 1, Ch. 465, L. 1981; amd. Secs. 1, 2, Ch. 254, L. 1983; amd. Sec. 1, Ch. 287, L. 1983; amd. Sec. 6, Ch. 680, L. 1985; amd. Sec. 2, Ch. 416, L. 1987; amd. Sec. 20, Ch. 489, L. 1991; amd. Sec. 6, Ch. 704, L. 1991; amd. Sec. 2, Ch. 330, L. 1993.

Part 24
County Auditor and Claims Against County

Part Cross-References

Interest on overdue accounts, Title 7, ch. 6, part 4.

7-6-2401. Creation of office of county auditor. (1) Except as provided in subsection (2), the office of county auditor exists in all counties of the first, second, third, or fourth class.

(2) The provisions of 7-6-2401 through 7-6-2413 do not apply to counties having a population of less than 15,000 persons according to the most recent federal census.

History: En. Sec. 1, p. 227, L. 1891; re-en. Sec. 4560, Pol. C. 1895; re-en. Sec. 3100, Rev. C. 1907; re-en. Sec. 4824, R.C.M. 1921; amd. Sec. 1, Ch. 117, L. 1923; re-en. Sec. 4824, R.C.M. 1935; amd. Sec. 1, Ch. 52, L. 1961; R.C.M. 1947, 16-3201(part); amd. Sec. 13, Ch. 252, L. 1979.

Cross-References

Classification of counties, 7-1-2111.

7-6-2402. Optional election for county auditor. There may be elected in each county of the classes named in 7-6-2401 some person to serve as county auditor.

History: En. Sec. 2, p. 227, L. 1891; re-en. Sec. 4561, Pol. C. 1895; re-en. Sec. 3101, Rev. C. 1907; re-en. Sec. 4825, R.C.M. 1921; re-en. Sec. 4825, R.C.M. 1935; amd. Sec. 3, Ch. 423, L. 1971; amd. Sec. 10, Ch. 100, L. 1973; amd. Sec. 1, Ch. 187, L. 1973; R.C.M. 1947, 16-3203(part); amd. Sec. 14, Ch. 252, L. 1979.

7-6-2403. Qualifications of county auditor. No person is eligible to serve in the office of county auditor of any county who is not of voting age and who has not been a resident of the county for which he is elected or appointed for at least 2 years preceding his election or appointment.

History: En. Sec. 2, p. 227, L. 1891; re-en. Sec. 4561, Pol. C. 1895; re-en. Sec. 3101, Rev. C. 1907; re-en. Sec. 4825, R.C.M. 1921; re-en. Sec. 4825, R.C.M. 1935; amd. Sec. 3, Ch. 423, L. 1971; amd. Sec. 10, Ch. 100, L. 1973; amd. Sec. 1, Ch. 187, L. 1973; R.C.M. 1947, 16-3203(part); amd. Sec. 15, Ch. 252, L. 1979.

7-6-2404. Oath of office. Any person who shall be elected or appointed to the office of county auditor shall, before entering upon the duties of said office, take and subscribe such constitutional oath as is required of other county officers.

History: En. Sec. 3, p. 228, L. 1891; re-en. Sec. 4562, Pol. C. 1895; re-en. Sec. 3102, Rev. C. 1907; re-en. Sec. 4826, R.C.M. 1921; re-en. Sec. 4826, R.C.M. 1935; amd. Sec. 9, Ch. 68, L. 1967; amd. Sec. 3, Ch. 7, L. 1973; R.C.M. 1947, 16-3204.

Cross-References

Oath of office, Art. III, sec. 3, Mont. Const.

7-6-2405. Location of office. The county auditor shall keep his principal office at the county seat of the county for which he shall have been elected or appointed.

History: En. Sec. 4, p. 228, L. 1891; re-en. Sec. 4563, Pol. C. 1895; re-en. Sec. 3103, Rev. C. 1907; re-en. Sec. 4827, R.C.M. 1921; re-en. Sec. 4827, R.C.M. 1935; amd. Sec. 1, Ch. 72, L. 1965; R.C.M. 1947, 16-3205(part).

7-6-2406. Compensation of auditor. The county auditor receives the annual compensation provided by law, payable monthly by warrants drawn on the treasury of the county, and shall receive no other compensation or emolument whatsoever for any service rendered or performed by him, except actual expenses for living and traveling whenever the duties of his office require his presence at any place in the county other than the county seat, and then only after the travel has been ordered and advised by the board of county commissioners.

History: En. Sec. 4, p. 228, L. 1891; re-en. Sec. 4563, Pol. C. 1895; re-en. Sec. 3103, Rev. C. 1907; re-en. Sec. 4827, R.C.M. 1921; re-en. Sec. 4827, R.C.M. 1935; amd. Sec. 1, Ch. 72, L. 1965; R.C.M. 1947, 16-3205(part); amd. Sec. 16, Ch. 252, L. 1979.

Cross-References

Salaries of county officers, 7-4-2503.

7-6-2407. Auditing and investigation of claims. (1) It shall be the duty of persons holding claims against any county having a county auditor to present the same to the county auditor, whose duty it shall be to audit the same. The county auditor shall also investigate and examine all claims presented to him and report the same with his finding to the board of county commissioners at their regular session after such investigation shall have been completed, with his approval or disapproval endorsed thereon, and he shall keep a complete record of all such claims and of his investigations and examinations of the same in a book kept for that purpose.

(2) In all counties having a county auditor:

(a) all bills, claims, accounts, or charges for materials of any kind or nature that may be purchased by and on behalf of the county by any of the county officers or contracted for by the county commissioners shall be investigated, examined, and inspected by the county auditor, who shall endorse his approval or disapproval thereon before any warrant for the payment of the same can be drawn;

(b) no claim against the county shall be paid or warrant drawn therefor unless the same shall have the approval of the county auditor; provided, however, that the judge of the district court of the county where any claim has been disapproved by the county auditor may order the payment of the same.

History: En. Sec. 7, p. 229, L. 1891; re-en. Sec. 4566, Pol. C. 1895; re-en. Sec. 3106, Rev. C. 1907; re-en. Sec. 4830, R.C.M. 1921; re-en. Sec. 4830, R.C.M. 1935; R.C.M. 1947, 16-3208.

Cross-References

Court order — may order spending in excess of appropriation, 7-6-2323.

7-6-2408. Auditor's powers related to investigations. (1) The county auditors are hereby authorized to administer any oath or affirmation rendered necessary to the performance of the duties of their respective offices.

(2) The county auditors shall have power to issue process and compel the attendance of witnesses before them and examine any matter they may deem necessary. Any witness attending before such auditor shall receive the same fees and mileage as witnesses attending before justices of the peace in trial or examinations in criminal cases.

History: En. Sec. 5, p. 228, L. 1891; re-en. Sec. 4564, Pol. C. 1895; re-en. Sec. 3104, Rev. C. 1907; re-en. Sec. 4828, R.C.M. 1921; re-en. Sec. 4828, R.C.M. 1935; R.C.M. 1947, 16-3206.

Cross-References

Witnesses — subpoenas and pay, Title 26, ch. 2.

7-6-2409. Examination of county books and accounts. (1) It is the duty of the county auditor to examine the books and accounts of the county treasurer, the county clerk and recorder, the sheriff, the clerk of the district court, and all other county and township officers within 15 days prior to the first regular session of the board of county commissioners in March, June, September, and December of each year unless a longer time is granted to the auditor by the board.

(2) The quarterly report shall contain a full and complete statement of the money received and disbursed by each of the officers since the last examination and report. For the purpose of this section, the county auditor has free access to all books and papers in each of the offices.

History: En. Sec. 9, p. 230, L. 1891; re-en. Sec. 4568, Pol. C. 1895; re-en. Sec. 3108, Rev. C. 1907; re-en. Sec. 4832, R.C.M. 1921; re-en. Sec. 4832, R.C.M. 1935; R.C.M. 1947, 16-3210; amd. Sec. 17, Ch. 252, L. 1979.

7-6-2410. Maintenance of records. The county auditor shall carefully preserve all documents, books, records, and other papers required to be kept in his office. Each county auditor, on going out of office, shall deliver over to his successor in office all documents, books, records, and property in his hands belonging to the county.

History: En. Sec. 6, p. 229, L. 1891; re-en. Sec. 4565, Pol. C. 1895; re-en. Sec. 3105, Rev. C. 1907; re-en. Sec. 4829, R.C.M. 1921; re-en. Sec. 4829, R.C.M. 1935; R.C.M. 1947, 16-3207.

Cross-References

Destruction of county records, 7-5-2132.

7-6-2411. List of claims allowed or rejected. The county clerk and recorder shall return to the county auditor, within 10 days after the adjournment of each session of the board of county commissioners, a list of the claims allowed or rejected, either in whole or in part, by them. This list shall be recorded by the auditor in a book kept for that purpose and carefully preserved in his office.

History: En. Sec. 8, p. 230, L. 1891; re-en. Sec. 4567, Pol. C. 1895; re-en. Sec. 3107, Rev. C. 1907; re-en. Sec. 4831, R.C.M. 1921; re-en. Sec. 4831, R.C.M. 1935; R.C.M. 1947, 16-3209.

7-6-2412. Other duties of auditor. (1) Subject to the requirements of subsection (2), the county auditor shall also perform such other duties, clerical or otherwise, as he may be directed to perform by the county commissioners.

(2) A reasonable amount of time must be allowed the county auditor for the performance of the duties definitely set forth in this part.

History: En. Sec. 11, p. 231, L. 1891; re-en. Sec. 4570, Pol. C. 1895; re-en. Sec. 3110, Rev. C. 1907; re-en. Sec. 4834, R.C.M. 1921; re-en. Sec. 4834, R.C.M. 1935; R.C.M. 1947, 16-3212.

7-6-2413. Limitation on number of deputy county auditors. The whole number of deputies allowed to county auditors must not exceed one in counties of the first, second, and third classes.

History: En. Sec. 2, Ch. 75, L. 1905; re-en. Sec. 3128, Rev. C. 1907; re-en. Sec. 4880, R.C.M. 1921; re-en. Sec. 4880, R.C.M. 1935; amd. Sec. 1, Ch. 97, L. 1939; amd. Sec. 2, Ch. 87, L. 1943; amd. Sec. 7, Ch. 391, L. 1973; R.C.M. 1947, 16-3706(part).

Cross-References

Authorization to exceed limitation on number of deputies, 7-4-2402.

7-6-2414 through 7-6-2420 reserved.

7-6-2421. Presentation of claims against county. (1) No account may be allowed by the board unless the same is made out in separate items, with the nature of each item stated. If the claim is for official services for which no specified fees are fixed by law, the time actually and necessarily devoted to such services must be stated. No account must be necessarily passed upon by the board unless made out as prescribed in this section and filed by the clerk prior to the session at which it is asked to be heard.

(2) Every claim against the county, except claims arising from injury to a person or property, which are limited under provisions of Title 2, chapter 9, parts 1 through 3, as amended, must be presented within 1 year after the last item accrued.

(3) No county officer may, except for his own service, present any claim, account, or demand for allowance against the county or in any way advocate the relief asked on the claim or demand made by another.

(4) Money deposited in the county treasury pursuant to former section 16-2616, R.C.M. 1947, and not otherwise disposed of shall be transferred by the county treasurer to the state treasurer for deposit in the agency fund provided for in Title 72, chapter 14, part 2. The county treasurer may deduct the fees and expenses of the coroner and the county prior to transferring the money.

History: Ap. p. Sec. 4287, Pol. C. 1895; re-en. Sec. 2946, Rev. C. 1907; re-en. Sec. 4609, R.C.M. 1921; Cal. Pol. C. Sec. 4073; re-en. Sec. 4609, R.C.M. 1935; Sec. 16-1807, R.C.M. 1947; Ap. p. Sec. 23, p. 503, Bannack Stat.; re-en. Sec. 23, p. 437, Cod. Stat. 1871; amd. Sec. 1, p. 63, L. 1874; re-en. Sec. 357, 5th Div. Rev. Stat. 1879; re-en. Sec. 762, 5th Div. Comp. Stat. 1887; amd. Sec. 4286, Pol. C. 1895; re-en. Sec. 2945, Rev. C. 1907; re-en. Sec. 4605, R.C.M. 1921; Cal. Pol. C. Sec. 4072; re-en. Sec. 4605, R.C.M. 1935; amd. Sec. 1, Ch. 56, L. 1957; amd. Sec. 2, Ch. 234, L. 1977; Sec. 16-1802, R.C.M. 1947; Ap.p. Sec. 4285, Pol. C. 1895; re-en. Sec. 2944, Rev. C. 1907; re-en. Sec. 4604, R.C.M. 1921; Cal. Pol. C. Sec. 4071; re-en. Sec. 4604, R.C.M. 1935; Sec. 16-1801, R.C.M. 1947; Ap.p. Sec. 4366, Pol. C. 1895; re-en. Sec. 3002, Rev. C. 1907; re-en. Sec. 4766, R.C.M. 1921; Cal. Pol. C. Sec. 4160; re-en. Sec. 4766, R.C.M. 1935; Sec. 16-2617, R.C.M. 1947; R.C.M. 1947, 16-1801(part), 16-1802, 16-1807, 16-2617; amd. Sec. 1, Ch. 225, L. 1979; amd. Sec. 18, Ch. 252, L. 1979.

7-6-2422. Opposition to claims. Any resident or taxpayer of the county may appear before the board and oppose the allowance of any claim or demand made against the county.

History: En. Sec. 4285, Pol. C. 1895; re-en. Sec. 2944, Rev. C. 1907; re-en. Sec. 4604, R.C.M. 1921; Cal. Pol. C. Sec. 4071; re-en. Sec. 4604, R.C.M. 1935; R.C.M. 1947, 16-1801(part); amd. Sec. 19, Ch. 252, L. 1979.

7-6-2423. Procedure for claims by county commissioners. All claims against the county presented by members of the board for per diem and mileage or other service rendered by them must be verified as other claims and must state that the service has been actually rendered.

History: En. Sec. 4293, Pol. C. 1895; re-en. Sec. 2952, Rev. C. 1907; re-en. Sec. 4607, R.C.M. 1921; Cal. Pol. C. Sec. 4082; re-en. Sec. 4607, R.C.M. 1935; R.C.M. 1947, 16-1805.

7-6-2424. Appeal of decision concerning claim. (1) Whenever a claim against a county is disallowed in whole or in part or whenever any taxpayer or resident of the county is not satisfied with any allowance made by the board, the claimant, taxpayer, or resident may appeal from the decision of the board to the district court for the county by causing a written notice of appeal to be served on the clerk of the board within 30 days after the making of the decision or allowance and executing a bond to the county, with surety to be approved by the clerk of the board, conditioned to prosecute the appeal to effect and to pay all costs that may be adjudged against the appellant.

(2) The clerk of the board, upon an appeal being taken, must immediately give notice thereof to the county attorney and must make out a return of the proceedings in the matter before the board, with its decision thereon, and file the same, together with the bond and all the papers therein in his possession, with the clerk of the district court.

(3) The appeal must be entered, tried, and determined the same as appeals from justices' courts, and costs are awarded in like manner.

History: (1)En. Sec. 25, p. 503, Bannack Stat.; re-en. Sec. 25, p. 437, Cod. Stat. 1871; amd. Sec. 2, p. 63, L. 1874; re-en. Sec. 359, 5th Div. Rev. Stat. 1879; re-en. Sec. 764, 5th Div. Comp. Stat. 1887; amd. Sec. 4288, Pol. C. 1895; re-en. Sec. 2947, Rev. C. 1907; re-en. Sec. 4610, R.C.M. 1921; Cal. Pol. C. Sec. 4075; re-en. Sec. 4610, R.C.M. 1935; Sec. 16-1808, R.C.M. 1947; (2), (3)En. Sec. 26, p. 504, Bannack Stat.; re-en. Sec. 26, p. 437, Cod. Stat. 1871; re-en. Sec. 360, 5th Div. Rev. Stat. 1879; re-en. Sec. 765, 5th Div. Comp. Stat. 1887; amd. Sec. 4289, Pol. C. 1895; re-en. Sec. 2948, Rev. C. 1907; re-en. Sec. 4611, R.C.M. 1921; re-en. Sec. 4611, R.C.M. 1935; Sec. 16-1809, R.C.M. 1947; R.C.M. 1947, 16-1808, 16-1809; amd. Sec. 20, Ch. 252, L. 1979.

Cross-References

Initiation of actions in District Court, Title 25, ch. 1, part 1; M.R.Civ.P. (see Title 25, ch. 20).

Appeals from Justices' Courts, 25-33-301, 25-33-302.

Surety bonds, Title 33, ch. 26.

7-6-2425. Auditing of county charges. Accounts for county charges of every description must be presented to the board of county commissioners to be audited as prescribed in 7-6-2421, 7-6-2429, and 7-6-2430.

History: En. Sec. 4680, Pol. C. 1895; re-en. Sec. 3198, Rev. C. 1907; re-en. Sec. 4951, R.C.M. 1921; Cal. Pol. C. Sec. 4343; amd. Sec. 1, Ch. 19, L. 1935; re-en. Sec. 4951, R.C.M. 1935; R.C.M. 1947, 16-3801.

7-6-2426. Enumeration of county charges. The following are county charges:

(1) charges incurred against the county by virtue of any provision of this title;

(2) one-half of the salary of the county attorney and all expenses necessarily incurred by him in criminal cases arising within the county;

(3) the salary and actual expenses for traveling, when on official duty, allowed by law to sheriffs and the compensation allowed by law to constables for executing process on persons charged with criminal offenses;

(4) the board of prisoners confined in jail;

(5) the accounts of the coroner of the county for such services as are provided by law;

(6) all charges and accounts for services rendered by any justice of the peace for services in the examination or trial of persons charged with crime as provided for by law;

(7) the necessary expenses incurred in the support of county hospitals and poorfarms and in the support of the indigent sick and the otherwise dependent poor whose support is chargeable to the county;

(8) the contingent expenses necessarily incurred for the use and benefit of the county;

(9) every other sum directed by law to be raised for any county purpose under the direction of the board of county commissioners or declared to be a county charge.

History: **En. Sec. 4681, Pol. C. 1895; re-en. Sec. 3199, Rev. C. 1907; re-en. Sec. 4952, R.C.M. 1921; Cal. Pol. C. Sec. 4344; re-en. Sec. 4952, R.C.M. 1935; amd. Sec. 3, Ch. 420, L. 1971; amd. Sec. 1, Ch. 72, L. 1975; R.C.M. 1947, 16-3802(1); amd. Sec. 7, Ch. 680, L. 1985.**

7-6-2427. *(Temporary)* **Special provisions for certain charges related to criminal prosecutions.** (1) Notwithstanding 7-6-2426, all costs of a criminal prosecution, including attorney fees, of an offense committed in the state prison are not charges against the county in which the state prison is located. The costs must be paid by the department of corrections.

(2) If a criminal action is removed before trial, the costs accruing upon removal and trial must be a charge against the county in which the indictment was found or information filed, subject to reimbursement as provided in 3-5-901. *(Terminates June 30, 2005—sec. 2, 3, Ch. 217, L. 1995.)*

7-6-2427. *(Effective July 1, 2005)* **Special provisions for certain charges related to criminal prosecutions.** (1) Notwithstanding 7-6-2426, all costs of a criminal prosecution, including attorneys' fees, of an offense committed in the state prison are not charges against the county in which the state prison is located. The costs must be paid by the department of corrections.

(2) If a criminal action is removed before trial, the costs accruing upon removal and trial must be a charge against the county in which the indictment was found or information filed, subject to partial or total reimbursement as provided in 3-5-901.

History: **(1)En. Sec. 4681, Pol. C. 1895; re-en. Sec. 3199, Rev. C. 1907; re-en. Sec. 4952, R.C.M. 1921; Cal. Pol. C. Sec. 4344; re-en. Sec. 4952, R.C.M. 1935; amd. Sec. 3, Ch. 420, L. 1971; amd. Sec. 1, Ch. 72, L. 1975; Sec. 16-3802, R.C.M. 1947; (2)En. Sec. 4682, Pol. C. 1895; re-en. Sec. 3200, Rev. C. 1907; re-en. Sec. 4953, R.C.M. 1921; Cal. Pol. C. Sec. 4345; re-en. Sec. 4953, R.C.M. 1935; Sec. 16-3803, R.C.M. 1947; R.C.M. 1947, 16-3802(2), 16-3803; amd. Sec. 8, Ch. 680, L. 1985; amd. Sec. 1, Ch. 262, L. 1991; amd. Sec. 1, Ch. 749, L. 1991; amd. Sec. 28, Ch. 546, L. 1995.**

Compiler's Comments

1995 Amendment: Chapter 546 at end of (1) substituted "department of corrections" for "department of corrections and human services"; and made minor changes in style. Amendment effective July 1, 1995.

Extension of Termination Date: (1) Section 2, Ch. 217, L. 1995, amended sec. 1, Ch. 217, L. 1993, by extending the termination date imposed by that section to June 30, 2005. Effective March 24, 1995.

(2) Section 3, Ch. 217, L. 1995, amended sec. 4, Ch. 749, L. 1991, by extending the termination date imposed by that section to June 30, 2005. Effective March 24, 1995.

7-6-2428. Procedure to collect charges when criminal case is removed. (1) The district court of the county to which a criminal action is removed must certify the amount of costs allowed and certified by the court to the board of county commissioners of the county of the district court. Such board shall audit the same and draw its warrants therefor upon the treasury of the county from which the action was removed. The board drawing the warrants shall forward to the treasurer and board of the county from which the action was transferred a certified copy of the total amount allowed by the court, giving each item as certified to them by the clerk of the district court and the court.

(2) The board receiving the certified copy of the costs allowed shall enter the same in its books as a charge against the treasury of its county. The county treasurer of the county from which the action was removed must, immediately upon presentation, pay the warrants out of the general fund of that county, or if at the time of presentation, there is not sufficient money in the general fund to pay the same, he must endorse upon the warrants "Not paid for want of funds", and the warrants must be registered and draw interest at the same rate and be paid in the same manner as though it had been drawn by the board of the county where the indictment was found or information filed.

History: En. Sec. 4683, Pol. C. 1895; re-en. Sec. 3201, Rev. C. 1907; re-en. Sec. 4954, R.C.M. 1921; Cal. Pol. C. Sec. 4346; re-en. Sec. 4954, R.C.M. 1935; R.C.M. 1947, 16-3804; amd. Sec. 21, Ch. 252, L. 1979.

7-6-2429. Examination and allowance of officers' accounts. The board of county commissioners has jurisdiction and power, under such limitations and restrictions as are prescribed by law, at the regular monthly meeting of the board, to examine and allow the accounts of all officers having the care, management, collection, or disbursement of money belonging to the county or appropriated by law or otherwise for its use and benefit.

History: En. Subd. 11, Sec. 1, Ch. 100, L. 1931; re-en. Sec. 4465.10, R.C.M. 1935; R.C.M. 1947, 16-1013.

7-6-2430. Accounts to be examined, settled, and allowed. The board of county commissioners has jurisdiction and power, under such limitations and restrictions as are prescribed by law, at the regular meetings of the board, to examine, settle, and allow all accounts legally chargeable against the county, except salaries of officers, and order warrants to be drawn on the county treasury therefor and provide for the issuing of the same.

History: En. Subd. 12, Sec. 1, Ch. 100, L. 1931; re-en. Sec. 4465.11, R.C.M. 1935; R.C.M. 1947, 16-1014; amd. Sec. 22, Ch. 252, L. 1979.

Part 25

County Taxation

7-6-2501. Authorization for county mill levy. The board of county commissioners has jurisdiction and power, under such limitations and reservations as are prescribed by law, to levy such tax annually on the taxable property of the county for county purposes as may be necessary to defray the current expenses thereof, including the salaries otherwise unprovided for, not exceeding 27 mills on each dollar of the taxable valuation for any one year for counties of the fourth, fifth, sixth, and seventh classes and 25 mills on each dollar of the taxable valuation for any one year for counties of the first, second, and third classes and to levy such taxes as are required to be levied by special or local statutes.

History: En. Subd. 13, Sec. 1, Ch. 100, L. 1931; re-en. Sec. 4465.12, R.C.M. 1935; amd. Sec. 1, Ch. 114, L. 1949; amd. Sec. 1, Ch. 169, L. 1951; amd. Sec. 1, Ch. 185, L. 1953; amd. Sec. 1, Ch. 69, L. 1955; amd. Sec. 1, Ch. 48, L. 1957; amd. Sec. 1, Ch. 212, L. 1959; amd. Sec. 1, Ch. 205, L. 1961; amd. Sec. 1, Ch. 33, L. 1963; amd. Sec. 1, Ch. 18, L. 1965; amd. Sec. 1, Ch. 128, L. 1967; amd. Sec. 1, Ch. 283, L. 1969; amd. Sec. 1, Ch. 503, L. 1973; amd. Sec. 1, Ch. 201, L. 1974; R.C.M. 1947, 16-1015.

Cross-References

Classification of counties, 7-1-2111.

Incorporation of property tax levy into county all-purpose levy, 7-6-2523.

Search and rescue units — mill levy, 7-32-235.

Temporary authority to exceed mill levy limitations, 15-7-122.

7-6-2502. Responsibility of county commissioners to fix tax rate and levy tax. The board of county commissioners of each county must, on the second Monday in August, fix the rate of county taxes and designate the number of mills on each dollar of valuation of property for each fund and must levy taxes upon the taxable property of the county.

History: En. Sec. 81, p. 104, L. 1891; re-en. Sec. 3825, Pol. C. 1895; re-en. Sec. 2598, Rev. C. 1907; re-en. Sec. 2150, R.C.M. 1921; Cal. Pol. C. Sec. 3714; re-en. Sec. 2150, R.C.M. 1935; R.C.M. 1947, 84-3805.

Cross-References

Levy to be made in mills — divisions of mills, 15-10-201.

7-6-2503. Duties of county treasurer related to taxation. The treasurer is collector of taxes. The county treasurer's duties as collector of taxes are prescribed in this title and Title 15.

History: Ap. p. Sec. 4314, Pol. C. 1895; re-en. Sec. 2959, Rev. C. 1907; re-en. Sec. 4727, R.C.M. 1921; Cal. Pol. C. Sec. 4105; re-en. Sec. 4727, R.C.M. 1935; Sec. 16-2405, R.C.M. 1947; Ap. p. Sec. 4372, Pol. C. 1895; re-en. Sec. 3008, Rev. C. 1907; re-en. Sec. 4772, R.C.M. 1921; re-en. Sec. 4772, R.C.M. 1935; Sec. 16-2626, R.C.M. 1947; R.C.M. 1947, 16-2405(part), 16-2626.

7-6-2504. Duties of county clerk related to taxation. The clerk of the board must record all orders levying taxes.

History: En. Secs. 32, 33, 35, p. 505, Bannack Stat.; re-en. Secs. 32, 33, 35, p. 439, Cod. Stat. 1871; re-en. Sec. 366, 367, 368, 5th Div. Rev. Stat. 1879; re-en. Secs. 770, 771, 773, 5th Div. Comp. Stat. 1887; amd. Sec. 4218, Pol. C. 1895; re-en. Sec. 2889, Rev. C. 1907; re-en. Sec. 4460, R.C.M. 1921; Cal. Pol. C. Sec. 4030; re-en. Sec. 4460, R.C.M. 1935; R.C.M. 1947, 16-908(8).

7-6-2505 through 7-6-2510 reserved.

7-6-2511. County levy for district court expenses. The governing body of each county may each year levy and collect a tax on the taxable property of the county for all district court costs, except those listed in 3-5-211, 3-5-213, and 3-5-215. The tax may not exceed 6 mills in the first- and second-class counties, 5 mills in third- and fourth-class counties, and 4 mills in fifth-, sixth-, and seventh-class counties. These expenses include but are not limited to salary and benefits for court clerks, court reporters, youth probation officers, and other employees of the district court.

History: En. Sec. 1, Ch. 692, L. 1979; amd. Sec. 2, Ch. 254, L. 1983.

Cross-References

Classification of counties, 7-1-2111.

District Court budget, 7-6-2351.

State grants to District Courts, 7-6-2352.

7-6-2512. County tax levy for health care facilities. (1) The board of county commissioners may, annually at the time of levying county taxes, fix and levy a tax, not to exceed 10 mills on each dollar of taxable valuation of property, upon all property within the county to erect, furnish, equip, expand, improve, maintain, and operate county-owned or county-operated health care facilities created under 7-8-2102, 7-34-2201, and 7-34-2502. "Health care facilities" as used in this section has the meaning as defined in 7-34-2201. The combined total number of mills levied under this section and for the county poor fund under 53-2-322 may not exceed 18 mills. A higher levy may be made upon compliance with 7-6-2531 through 7-6-2537 or 53-2-322. If a hospital district is created under Title 7, chapter 34, part 21, the mill levy authorized by this section may not be imposed on property within that hospital district.

(2) If a county issues bonds under 7-34-2411 to finance or refinance the costs of a health care facility, the board of county commissioners may covenant to levy the tax authorized by this section during the term of the bonds, to the extent necessary, and to apply the collections of the tax to the costs of erecting, furnishing, equipping, expanding, improving, maintaining, and operating the health care facility or facilities of the county or the payment of principal of or interest on the bonds. The pledge of the taxes to the payment of the bonds may not cause the bonds to be considered indebtedness of the county for the purpose of any statutory limitation or restriction. The pledge may be made by the board only upon authorization of a majority of the electors of the county voting on the pledge at a general or special election as provided in 7-34-2414.

History: En. Sec. 1, Ch. 625, L. 1983; amd. Sec. 2, Ch. 561, L. 1993; amd. Sec. 1, Ch. 520, L. 1995.

Compiler's Comments

1995 Amendment: Chapter 520 in (1), in first sentence near end, substituted "health care facilities" for "hospitals and nursing homes or other hospital facilities" and deleted reference to 7-34-2301 and in second sentence changed defined term from hospital facilities to health care facilities and substituted "has the meaning as defined in 7-34-2201" for "means a hospital or hospital-related facility, including outpatient facilities, public health centers, rehabilitation facilities, long-term care facilities, and infirmaries"; inserted (2) relating to a pledge of taxes to pay off bonds or build facilities if authorized by a majority of the electors of the county voting on the matter; and made minor changes in style. Amendment effective April 25, 1995.

Cross-References

Prohibition on use of poor fund for improvement of county hospital or nursing home, 53-2-322.

7-6-2513. County public safety levy — purpose. The board of county commissioners may, annually at the time of levying county taxes, fix and levy a tax on all property within the county for the purpose of providing for the public safety of citizens. The tax must be used to support county law enforcement services and to maintain county detention centers. Money received from the tax must be placed in a special account to be used for the purposes of this section.

History: En. Sec. 1, Ch. 318, L. 1993; amd. Sec. 1, Ch. 390, L. 1995.

Compiler's Comments

1995 Amendment: Chapter 390 inserted third sentence concerning placing tax money in special account. Amendment effective April 12, 1995.

7-6-2514. Tax limitation applicable. The property tax limitation to 1986 levels under Title 15, chapter 10, part 4, applies to the county public safety levy authorized in 7-6-2513. The limitation is determined by the total tax levied for the county general fund. The first year a county public safety tax is levied, the public safety levy and the general fund levy may not exceed the prior year's county general fund levy. In subsequent years, any increases in the public safety levy and the general fund levy are limited under Title 15, chapter 10, part 4.

History: En. Sec. 2, Ch. 318, L. 1993.

7-6-2515 through 7-6-2520 reserved.

7-6-2521. All-purpose levy authorized for counties. A county may at its option levy an all-purpose levy as provided in 7-6-2521 through 7-6-2526.

History: En. Sec. 1, Ch. 291, L. 1987.

7-6-2522. All-purpose levy — maximum. (1) The all-purpose levy is an annual levy upon the taxable value of all property in the county subject to taxation for county purposes in lieu of the levies specified in 7-6-2523. The all-purpose levy may not exceed the lesser of:

(a) 55 mills on the dollar; or

(b) the total number of mills levied in the prior year pursuant to the levies set forth in 7-6-2523 as certified by the department of revenue under 15-10-202.

(2) If the county governing body determines that the interests of the county would be served by an all-purpose levy, it shall specify its intent to impose the all-purpose levy in the resolution approving and adopting the annual budget.

History: En. Sec. 2, Ch. 291, L. 1987.

7-6-2523. Special service levies replaced by all-purpose levy. A county using the all-purpose levy may not impose any of the following levies:

(1) general fund levy, as provided in 7-6-2501;
(2) bridge levy, as provided in 7-14-2502;
(3) recreation levy, as provided in 7-16-101;
(4) county fair levy, as provided in 7-21-3410;
(5) weed levy, as provided in 7-22-2142;
(6) insect pest levy, as provided in 7-22-2306;
(7) poor fund levy, as provided in 53-2-322; or
(8) developmental disabilities facility levy, as provided in 53-20-208.

History: En. Sec. 3, Ch. 291, L. 1987; amd. Sec. 3, Ch. 561, L. 1993.

7-6-2524. Changes from all-purpose levy. A county adopting the all-purpose levy provided for in 7-6-2521 through 7-6-2526 is bound by that adoption during the ensuing fiscal year but may abandon the method in succeeding fiscal years.

History: En. Sec. 4, Ch. 291, L. 1987.

7-6-2525. Distribution of all-purpose levy — exception. (1) The money received from the all-purpose levy must be accounted for in a common fund known as the all-purpose fund.

(2) The all-purpose fund may be used only for purposes that are authorized for revenue derived from the individual levies set forth in 7-6-2523, but the county governing body may allocate the revenue from the fund, in accordance with county budget law, to fund any enumerated purpose that it considers appropriate.

(3) This section does not apply to a county that has adopted the alternative accounting method provided for in Title 7, chapter 6, part 6.

History: En. Sec. 5, Ch. 291, L. 1987; amd. Sec. 31, Ch. 430, L. 1995.

Compiler's Comments

1995 Amendment: Chapter 430 inserted (3) providing exception to distribution of all-purpose levy for county that has adopted alternative accounting method provided in Title 7, chapter 6, part 6. Amendment effective April 13, 1995.

7-6-2526. Future levies. Any statutory mill levy authorized for county governments that is not specifically included in levies replaced by the all-purpose levy, as specified in 7-6-2523, is in addition to the all-purpose levy.

History: En. Sec. 6, Ch. 291, L. 1987.

7-6-2527 through 7-6-2530 reserved.

7-6-2531. County may exceed maximum mill levy — election required. The governing body of a county may raise money by taxation for the support of county government services, facilities, or other capital projects in excess of the levy or levies allowed by law under the following conditions:

(1) The governing body shall pass a resolution indicating its intent to exceed the current statutory mill levy on the approval of a majority of the qualified electors voting in an election under subsection (2). The resolution must include:

(a) the specific purpose for which the additional money will be used;
(b) the specific amount to be raised;
(c) the approximate number of mills required; and
(d) the specific mill levy limitation to be exceeded.

(2)(a) Except as provided in subsection (2)(b), the governing body shall submit the question of the additional mill levy to the qualified electors of the county at the next regular primary election held in an even-numbered year.

(b) If the purpose of the special levy designated pursuant to subsection (1)(a) is for the support of a hospital facility as described in 7-6-2512, the governing body may submit the question of the additional mill levy to the qualified electors of the county at a general election, a school election held pursuant to 20-3-304, or at a regular primary election held in an even-numbered year.

(c) If the majority voting on the question are in favor of the additional levy or levies, the governing body is authorized to exceed the statutory mill levy limit in the amount specified in the resolution for a period not to exceed 2 years.

History: En. Sec. 1, Ch. 613, L. 1979; amd. Sec. 1, Ch. 215, L. 1995.

Compiler's Comments

1995 Amendment: Chapter 215 at beginning of (2)(a) inserted exception clause; inserted (2)(b) concerning hospital facility levy election; and made minor changes in style. Amendment effective March 24, 1995.

Cross-References

Primary election dates, 13-1-107.

7-6-2532. Purpose of additional mill levy to be stated. The submission of the question shall expressly state the purpose for which the additional levy is to be made.

History: En. Sec. 2, Ch. 613, L. 1979.

7-6-2533. Notice of election on question of additional mill levy. Whenever the question of making an additional mill levy is submitted to the qualified electors, notice shall be given in the manner prescribed by law for noticing of elections.

History: En. Sec. 3, Ch. 613, L. 1979.

7-6-2534. Form of ballot. (1) If at any time it is desired to submit the question of additional levies for more than one purpose, such propositions shall be submitted on separate ballots.

(2) Each of the ballots shall be in substantially the following form:

Shall the county governing body be authorized to make a levy of (here insert the number) mills taxes in addition to the regular levy now authorized by law for the purpose of (here insert the purpose for which the additional levy is to be made and the period for which it shall be in effect)?

☐ FOR additional levy

☐ AGAINST additional levy

History: En. Sec. 4, Ch. 613, L. 1979.

7-6-2535. Conduct of election. (1) The electors shall mark the ballot or ballots in the same manner as other ballots are marked under the election laws of this state.

(2) The election shall be held and the votes canvassed and returned as in other county elections as provided in Title 13.

History: En. Sec. 5, Ch. 613, L. 1979.

7-6-2536. Use of proceeds from additional mill levy. (1) Except as provided in subsection (2), if authorized, the money raised by the additional levy shall be used only for that specific purpose provided for in 7-6-2532.

(2) If any balance remains on hand after the purpose for which the levy was made has been accomplished, the balance may by vote of the governing body be transferred to any other fund of the county.

History: En. Sec. 6, Ch. 613, L. 1979.

7-6-2537. Emergency provisions in effect. Nothing in 7-6-2531 through 7-6-2536 shall affect the emergency levy as provided by law.

History: En. Sec. 7, Ch. 613, L. 1979.

Cross-References

Emergency expenditures, 7-6-2341 through 7-6-2345.

7-6-2538 and 7-6-2539 reserved.

7-6-2540. Repealed. Sec. 169, Ch. 27, Sp. L. November 1993.

History: En. Sec. 11, Ch. 680, L. 1991.

Part 26

County Warrants

7-6-2601. Details related to county warrants. (1) Warrants issued pursuant to 7-6-2202(1) shall be signed by the county clerk and the chairman of the board of county commissioners, except warrants drawn on the redemption fund.

(2) All warrants issued by the county clerk during each year, commencing with the first Monday in January, must be numbered consecutively. The number, date, and amount of each and the name of the person to whom payable and the purpose for which drawn must be stated thereon; and the warrants must, at the time they are issued, be registered by him.

(3) Warrants drawn by order of the board on the county treasury for the current expenses during each year must specify the liability for which they are drawn and when the liability accrued.

History: (1)En. Sec. 4424, Pol. C. 1895; re-en. Sec. 3045, Rev. C. 1907; re-en. Sec. 4811, R.C.M. 1921; Cal. Pol. C. Sec. 4204; amd. Sec. 1, Ch. 79, L. 1923; re-en. Sec. 4811, R.C.M. 1935; Sec. 16-2917, R.C.M. 1947; (2)En. Sec. 4425, Pol. C. 1895; re-en. Sec. 3046, Rev. C. 1907; re-en. Sec. 4812, R.C.M. 1921; Cal. Pol. C. Sec. 4219; re-en. Sec. 4812, R.C.M. 1935; Sec. 16-2918, R.C.M. 1947; (3)En. Sec. 4290, Pol. C. 1895; re-en. Sec. 2949, Rev. C. 1907; re-en. Sec. 4612, R.C.M. 1921; Cal. Pol. C. Sec. 4076; re-en. Sec. 4612, R.C.M. 1935; R.C.M. 1947, 16-1810(part), 16-2917(part), 16-2918; amd. Sec. 23, Ch. 252, L. 1979.

7-6-2602. Payment of warrants. (1) When a warrant is presented for payment, if there is money in the treasury for that purpose, the county treasurer must pay the same, write on the face thereof "Paid" and the date of payment, and sign his name thereto. Warrants must be paid in the order of presentation to the treasurer.

(2) The county treasurer must not pay any order or warrant except to the payee thereof or to his agent, assignee, or legal representative, whose authority must be in writing and delivered to him and must be returned with such order or warrant, when paid, to the board of county commissioners.

History: Ap. p. Sec. 4352, Pol. C. 1895; re-en. Sec. 2988, Rev. C. 1907; re-en. Sec. 4752, R.C.M. 1921; Cal. Pol. C. Sec. 4147; re-en. Sec. 4752, R.C.M. 1935; Sec. 16-2603, R.C.M. 1947; Ap. p. Sec. 4290, Pol. C. 1895; re-en. Sec. 2949, Rev. C. 1907; re-en. Sec. 4612, R.C.M. 1921; Cal. Pol. C. Sec. 4076; re-en. Sec. 4612, R.C.M. 1935; Sec. 16-1810, R.C.M. 1947; (2)En. Sec. 98, p. 453, Cod. Stat. 1871; re-en. Sec. 444, 5th Div. Rev. Stat. 1879; re-en. Sec. 897, 5th Div. Comp. Stat. 1887; re-en. Sec. 4357, Pol. C. 1895; re-en. Sec. 2993, Rev. C. 1907; re-en. Sec. 4757, R.C.M. 1921; re-en. Sec. 4757, R.C.M. 1935; Sec. 16-2608, R.C.M. 1947; R.C.M. 1947, 16-1810(part), 16-2603, 16-2608(part).

7-6-2603. Registration of warrants. (1) If the fund is insufficient to pay any warrant, it must be registered and thereafter paid in the order of its registration.

(2) The county treasurer must not register any county order or warrant in the name of any person other than the payee thereof except at the request of such payee or his agent, assignee, or legal representative, whose authority must be produced to the treasurer in writing.

History: (1)En. Sec. 4290, Pol. C. 1895; re-en. Sec. 2949, Rev. C. 1907; re-en. Sec. 4612, R.C.M. 1921; Cal. Pol. C. Sec. 4076; re-en. Sec. 4612, R.C.M. 1935; Sec. 16-1810, R.C.M. 1947; (2)En. Sec. 98, p. 453, Cod. Stat. 1871; re-en. Sec. 444, 5th Div. Rev. Stat. 1879; re-en. Sec. 897, 5th Div. Comp. Stat. 1887; re-en. Sec. 4357, Pol. C. 1895; re-en. Sec. 2993, Rev. C. 1907; re-en. Sec. 4757, R.C.M. 1921; re-en. Sec. 4757, R.C.M. 1935; Sec. 16-2608, R.C.M. 1947; R.C.M. 1947, 16-1810(part), 16-2608(part).

7-6-2604. Interest on unpaid warrants. (1) When any high school warrant or any school district warrant is presented to the treasurer for payment and the same is not paid for want of funds, the treasurer must endorse thereon "Not paid for want of funds", annexing the date of presentation, and sign his name thereto. When the treasurer pays any warrant on which any interest is due, he must note on the warrant the amount of interest paid thereon and enter on his account the amount of such interest, distinct from the principal.

(2) From and after the date of presentation and endorsement by the treasurer, the warrant shall bear interest at a rate fixed by the board of trustees in accordance with law.

(3) All county warrants, after having been presented to the county treasurer for payment and by him endorsed "Not paid for want of funds in the treasury", from and after the date of such presentation and endorsement, shall draw interest at the rate fixed by the board of county commissioners in accordance with law.

History: Ap. p. Sec. 4353, Pol. C. 1895; amd. Sec. 2, p. 99, L. 1899; re-en. Sec. 2989, Rev. C. 1907; re-en. Sec. 4753, R.C.M. 1921; Cal. Pol. C. Sec. 4148; re-en. Sec. 4753, R.C.M. 1935; amd. Sec. 2, Ch. 15, L. 1941; amd. Sec. 1, Ch. 53, L. 1945; amd. Sec. 25, Ch. 234, L. 1971; Sec. 16-2604, R.C.M. 1947; Ap. p. Sec. 4359, Pol. C. 1895; re-en. Sec. 2995, Rev. C. 1907; re-en. Sec. 4759, R.C.M. 1921; Cal. Pol. C. Sec. 4153; re-en. Sec. 4759, R.C.M. 1935; Sec. 16-2610, R.C.M. 1947; Ap. p. Sec. 1, Ch. 86, L. 1923; re-en Sec. 4622.1, R.C.M. 1935; amd. Sec. 1, Ch. 37, L. 1939; amd. Sec. 1, Ch. 11, L. 1963; amd. Sec. 68, Ch. 348, L. 1974; Sec. 16-2002, R.C.M. 1947; R.C.M. 1947, 16-2002, 16-2604, 16-2610; amd. Sec. 33, Ch. 575, L. 1981.

Cross-References

Rate of interest payable on warrants, 17-5-102.

7-6-2605. Call for payment of warrants drawing interest. (1) When there is sufficient money to pay the warrants drawing interest, the treasurer must give notice as provided in 7-1-2121 that he is ready to pay such warrants.

(2) In advertising warrants under the provisions of this section in any newspaper, the treasurer must not publish the warrants in detail but give notice only that county warrants presented for payment prior to such date, stated in the notice are payable. When only a part of the warrants presented for payment on the same day are payable, the treasurer must designate such payable warrants in the advertisement.

(3) Such warrants cease to draw interest from the first publication or posting of such notice.

(4) (a) If such warrants be not re-presented for payment within 60 days from the time the notice hereinbefore provided for is given, the fund set aside for the payment of the same must be applied by the treasurer to the payment of unpaid warrants next in order of registry.

(b) The board of county commissioners may, on application and presentation of warrants, properly endorsed, which have been advertised, pass an order directing the treasurer to pay them out of any money in the treasury not otherwise appropriated.

History: (1), (3)En. Sec. 4354, Pol. C. 1895; re-en. Sec. 2990 Rev. C. 1907; re-en. Sec. 4754, R.C.M. 1921; Cal. Pol. C. Sec. 4149; re-en. Sec. 4754, R.C.M. 1935; Sec. 16-2605, R.C.M. 1947; (2)En. Sec. 4355, Pol. C. 1895; re-en. Sec. 2991, Rev. C. 1907; re-en. Sec. 4755, R.C.M. 1921; Cal. Pol. C. Sec. 4150; re-en. Sec. 4755, R.C.M. 1935; Sec. 16-2606, R.C.M. 1947; (4)En. Sec. 4358, Pol. C. 1895; re-en. Sec. 2994, Rev. C. 1907; re-en. Sec. 4758, R.C.M. 1921; Cal. Pol. C. Sec. 4152; re-en. Sec. 4758, R.C.M. 1935; Sec. 16-2609, R.C.M. 1947; R.C.M. 1947, 16-2605, 16-2606, 16-2609; amd. Sec. 9, Ch. 349, L. 1985.

7-6-2606. Order of redemption of warrants. (1) Warrants drawn on the treasury and properly attested are entitled to preference as to payment out of money in the treasury properly applicable to such warrants according to the priority of time in which they were presented. The time of presenting such warrants must be noted by the treasurer.

(2) Upon the receipt of money into the treasury, not otherwise appropriated, he must set apart the same or so much thereof as is necessary for the payment of such warrants.

History: En. Sec. 94, p. 452, Cod. Stat. 1871; amd. Sec. 1, p. 68, L. 1874; re-en. Sec. 440, 5th Div. Rev. Stat. 1879; re-en. Sec. 893, 5th Div. Comp. Stat. 1887; amd. Sec. 4356, Pol. C. 1895; re-en. Sec. 2992, Rev. C. 1907; re-en. Sec. 4756, R.C.M. 1921; Cal. Pol. C. Sec. 4151; re-en. Sec. 4756, R.C.M. 1935; R.C.M. 1947, 16-2607.

7-6-2607. Examination and processing of warrants. (1) The board, at its annual March session or more often if necessary, must examine the county warrants returned by the county treasurer by comparing each warrant with the record of warrants issued in the county clerk's office.

(2) The board must cause to be canceled all county warrants that have remained uncalled for 1 year or more in the county clerk's office, these warrants to be canceled in the same manner as other county warrants. At the same time, the county treasurer must deliver to the board all warrants or vouchers that are in the treasurer's possession for money disbursed by him as treasurer and the clerk must receipt for the same.

(3) The board must cause to be entered on the record of warrants, opposite to the entry of each warrant issued, the date when the warrant was canceled and must make a list of the canceled warrants, specifying the number, date, amount, and the person to whom the same was payable, and must cause the list to be entered on the minutes of the board.

History: En. Sec. 28, p. 504, Bannack Stat.; amd. Sec. 28, p. 438, Cod. Stat. 1871; re-en. Sec. 362, 5th Div. Rev. Stat. 1879; re-en. Sec. 767, 5th Div. Comp. Stat. 1887; amd. Sec. 4291, Pol. C. 1895; re-en. Sec. 2950, Rev. C. 1907; re-en. Sec. 4613, R.C.M. 1921; re-en. Sec. 4613, R.C.M. 1935; R.C.M. 1947, 16-1811; amd. Sec. 24, Ch. 252, L. 1979.

Part 27

Investment of County Money

Part Cross-References

Deposit and investment of public money, 7-6-201.

Unified investment fund, Title 17, ch. 6, part 2.

7-6-2701. Investment of certain money in county, municipal, hospital, and school warrants. (1) Except as provided in 7-6-2802, if a county has under its control any money for which there is no immediate demand, in any special fund subject to deposit, which in the judgment of the board of county commissioners it would be advantageous to invest in county, municipal, hospital district, or school district registered warrants, the county commissioners are authorized in their discretion to direct the county treasurer to purchase such warrants of entities located in the same county.

(2) For such purchases, the county commissioners shall:

(a) designate the fund or funds to be so invested;

(b) fix the amount that may be purchased;

(c) establish the rate of interest the county shall receive for the investment; and

(d) designate the warrants which are to be purchased by such funds.

(3) The officer drawing a warrant to be purchased for investment by a county shall cause to be attached to or stamped, written, or printed upon the warrant a notice to the effect that the county will exercise its preference right to purchase the warrant.

(4) (a) A school district, hospital district, or county warrant presented to the county treasurer for purchase by the county must be registered as any other school district, hospital district, or county warrant.

(b) A municipal warrant presented to the municipal clerk or treasurer for purchase by the county must be registered, and the holder of the warrant must be informed that the warrant may be presented to the county treasurer for purchase by the county.

(5) The county treasurer shall, when a warrant designated for purchase under the provisions of subsection (2) is presented to him, purchase the same out of the proper fund as designated by the board. When the designated amounts have been invested, the county treasurer shall notify the county clerk and recorder or the applicable officer authorized to draw such warrants.

(6) Interest earned from such investments, including interest on the sale of bonds accrued in the period between the date of issue and the time of purchase, shall be credited to the sinking fund of the county, notwithstanding the provisions of 7-6-204(1).

(7) No provision of this section may be construed to prevent the investment of county or county high school money under the state unified investment program established in Title 17, chapter 6, part 2.

History: En. Sec. 1, Ch. 144, L. 1927; re-en. Sec. 4639.1, R.C.M. 1935; amd. Sec. 1, Ch. 151, L. 1951; amd. Sec. 1, Ch. 223, L. 1961; amd. Sec. 1, Ch. 13, L. 1963; amd. Sec. 1, Ch. 268, L. 1969; amd. Sec. 1, Ch. 421, L. 1973; amd. Sec. 1, Ch. 304, L. 1975; R.C.M. 1947, 16-2050(part); amd. Sec. 1, Ch. 92, L. 1985; amd. Sec. 1, Ch. 349, L. 1991.

7-6-2702. Investment of money held in capital improvement fund. The money held in the capital improvement fund, authorized by 7-6-2219 may be invested as provided by law. All interest earned on the fund must be credited to the capital improvement fund.

History: En. 16-1189 by Sec. 4, Ch. 54, L. 1975; R.C.M. 1947, 16-1189.

Cross-References

Montana Health Facility Authority bonds — legal investment, 90-7-113.

Part 28
Management of School Money

Part Cross-References

School finance, Title 20, ch. 9.

7-6-2801. Management of school funds. The county treasurer must:

(1) keep all school money in a separate fund and keep a separate account of its disbursement to the several school districts which are entitled to receive it, according to the apportionment of the county superintendent of schools;

(2) notify the county superintendent of the amount of the county school fund in the county treasury subject to apportionment, whenever required, and inform him of the amount of school money belonging to any other fund subject to apportionment, or as otherwise provided by law;

(3) pay all warrants drawn on county or district school money, in accordance with the provisions of law, whenever such warrants are countersigned by the district clerk and properly endorsed by the holders;

(4) make annually, during the month of September, a financial report for the preceding year ending August 31 to the county superintendent, in such form as is required by him.

History: En. Sec. 4350, Pol. C. 1895; re-en. Sec. 2986, Rev. C. 1907; re-en. Sec. 4750, R.C.M. 1921; Cal. Pol. C. Sec. 4144; re-en. Sec. 4750, R.C.M. 1935; amd. Sec. 3, Ch. 452, L. 1975; R.C.M. 1947, 16-2601(6) thru (9); amd. Sec. 25, Ch. 252, L. 1979.

7-6-2802. Investment of proceeds arising from sale of county high school construction bonds. (1) Whenever the county has under its control any money realized from the sale of bonds by a county high school for the purpose of construction, for which there is no immediate demand and which in the judgment of the governing body of the county high school it would be advantageous to invest in any time or savings deposit or in short-term obligations of the United States of America, such governing body may in its discretion direct the county treasurer to make such investments.

(2) Interest earned from such investments, except interest on the sale of bonds accrued in the period between the date of issue and the time of purchase, which must be credited to the sinking fund, may be credited to the sinking fund of the county high school, provided that in the event construction of said buildings is delayed for a period longer than 6 months due to court action or other causes beyond the control of the trustees, the trustees may direct that interest earned be credited to the fund from which the money was withdrawn. The trustees may authorize expenditures from interest earned, except as provided above, for furnishing and equipping the buildings for which the bonds were sold.

(3) No provision of this section may be construed to prevent the investment of county or county high school money under the state unified investment program established in Title 17, chapter 6, part 2.

History: En. Sec. 1, Ch. 144, L. 1927; re-en. Sec. 4639.1, R.C.M. 1935; amd. Sec. 1, Ch. 151, L. 1951; amd. Sec. 1, Ch. 223, L. 1961; amd. Sec. 1, Ch. 13, L. 1963; amd. Sec. 1, Ch. 268, L. 1969; amd. Sec. 1, Ch. 421, L. 1973; amd. Sec. 1, Ch. 304, L. 1975; R.C.M. 1947, 16-2050(2), (3).

Cross-References

Montana Health Facility Authority bonds — legal investment, 90-7-113.

Parts 29 through 40 reserved

Part 41

General Provisions Related to Municipalities

7-6-4101. Fiscal year for municipalities. The fiscal year of cities and towns commences on July 1 of each year and ends on June 30 of the following year.

History: En. Sec. 4873, Pol. C. 1895; amd. Sec. 1, p. 224, L. 1897; re-en. Sec. 3359, Rev. C. 1907; re-en. Sec. 5217, R.C.M. 1921; amd. Sec. 1, Ch. 25, L. 1927; re-en. Sec. 5217, R.C.M. 1935; R.C.M. 1947, 84-4730; amd. Sec. 26, Ch. 252, L. 1979.

7-6-4102. Appropriation of money and payment of debts and expenses. The city or town council has power to appropriate money and provide for the payment of the debts and expenses of the city or town and also the debts of the municipal corporation of which it is the successor.

History: En. Subd. 76, Sec. 5039, R.C.M. 1921; amd. Sec. 1, Ch. 115, L. 1925; amd. Sec. 1, Ch. 20, L. 1927; re-en. Sec. 5039.75, R.C.M. 1935; R.C.M. 1947, 11-978.

7-6-4103. Annual appropriation — exception. (1) The council shall, during the month of July in each fiscal year, pass an ordinance to be known as the "Annual appropriation for the .... of .... for the fiscal year beginning July 1, 19..", in which ordinance there must be appropriated enough money to defray the expenses or liabilities of the city or town for the fiscal year. There must be specified in the ordinance the amount appropriated for each separate object or fund and the salary or compensation to be paid to each officer of the city or town.

(2) This section does not apply to a city or town that has adopted the alternative accounting method provided for in Title 7, chapter 6, part 6.

History: **En. Sec. 380, 5th Div. Comp. Stat. 1887; amd. Sec. 4874, Pol. C. 1895; re-en. Sec. 3360, Rev. C. 1907; re-en. Sec. 5218, R.C.M. 1921; amd. Sec. 2, Ch. 25, L. 1927; re-en. Sec. 5218, R.C.M. 1935; R.C.M. 1947, 84-4731; amd. Sec. 32, Ch. 430, L. 1995.**

Compiler's Comments

1995 Amendment: Chapter 430 inserted (2) providing exception to annual ordinance requirement for city or town that has adopted alternative accounting method provided in Title 7, chapter 6, part 6; and made minor changes in style. Amendment effective April 13, 1995.

Cross-References

Appropriation not subject to referenda, 7-5-131.

7-6-4104. Duties of city treasurer relating to finances — exception. It is the duty of the city treasurer:

(1) to receive all money that comes to the city, either from taxation or otherwise, and to pay the same out on the warrant of the mayor, countersigned by the clerk, drawn in accordance with law;

(2) to give every person paying money to the treasurer a receipt, specifying the date of payment, the amount, and for what paid;

(3) to pay out, in the order registered, all warrants presented for payment, when there are funds in the treasury to pay the same.

(4) This section does not apply to a city that has adopted the alternative accounting method provided for in Title 7, chapter 6, part 6.

History: **En. Sec. 4788, Pol. C. 1895; re-en. Sec. 3257, Rev. C. 1907; amd. Sec. 2, Ch. 88, L. 1913; re-en. Sec. 5034, R.C.M. 1921; Cal. Pol. C. Sec. 4392; amd. Sec. 3, Ch. 146, L. 1974; R.C.M. 1947, 11-807(part); amd. Sec. 33, Ch. 430, L. 1995.**

Compiler's Comments

1995 Amendment: Chapter 430 inserted (4) providing exception for treasurer of city that has adopted alternative accounting method provided in Title 7, chapter 6, part 6; and made minor changes in style. Amendment effective April 13, 1995.

Cross-References

Payments by state to local government entities — notice, 17-8-311.

7-6-4105. Financial reports and records to be maintained by city treasurer — exception. (1) It is the duty of the city treasurer:

(a) to present to the council, on a date set by the council, a full and detailed statement of the amounts of money belonging to the city received by and disbursed by the treasurer during the preceding month and the state of each particular fund. The statement must be verified by the treasurer's oath.

(b) to keep the books and accounts of the city in a manner as to correctly present the condition of the finances of the city, which must always be open to the inspection of the mayor or the council or any member of the council;

(c) to render at any time an account to the council, showing the money on hand and the condition of the treasury;

(d) to annually make out and submit to the city council at its last meeting prior to May 1 a detailed account of all receipts and expenditures during the past fiscal year and to file the same with the clerk;

(e) to keep a separate account of each fund or appropriation and the debits and credits of the account;

(f) to keep a register of all warrants paid, called "The Registry Book", which must show the date, amount, and number and the person to whom and the fund from which the same was paid; and

(g) to deliver and file with the city clerk all vouchers, warrants, or orders paid by the treasurer.

(2) This section does not apply to a city that has adopted the alternative accounting method provided for in Title 7, chapter 6, part 6.

History: En. Sec. 4788, Pol. C. 1895; re-en. Sec. 3257, Rev. C. 1907; amd. Sec. 2, Ch. 88, L. 1913; re-en. Sec. 5034, R.C.M. 1921; Cal. Pol. C. Sec. 4392; amd. Sec. 3, Ch. 146, L. 1974; R.C.M. 1947, 11-807(part); amd. Sec. 1, Ch. 26, L. 1983; amd. Sec. 34, Ch. 430, L. 1995.

Compiler's Comments

1995 Amendment: Chapter 430 inserted (2) providing exception for treasurer of city that has adopted alternative accounting method provided in Title 7, chapter 6, part 6; and made minor changes in style. Amendment effective April 13, 1995.

7-6-4106. Publication or posting of annual statement of city receipts and expenditures — exception. (1) An abstract of the account of receipts and expenditures required by 7-6-4105(1)(e) must be published in some newspaper in the city, or if none is published, the abstract must be posted in the room or building occupied by the council.

(2) This section does not apply to a city that has adopted the alternative accounting method provided for in Title 7, chapter 6, part 6.

History: En. Sec. 4788, Pol. C. 1895; re-en. Sec. 3257, Rev. C. 1907; amd. Sec. 2, Ch. 88, L. 1913; re-en. Sec. 5034, R.C.M. 1921; Cal. Pol. C. Sec. 4392; amd. Sec. 3, Ch. 146, L. 1974; R.C.M. 1947, 11-807(part); amd. Sec. 35, Ch. 430, L. 1995.

Compiler's Comments

1995 Amendment: Chapter 430 in (1) substituted "7-6-4105(1)(e)" for "7-6-4105(4)"; inserted (2) providing exception from publishing requirement for city that has adopted alternative accounting method provided in Title 7, chapter 6, part 6; and made minor changes in style. Amendment effective April 13, 1995.

7-6-4107. Duties of city clerk related to finance — exception. (1) It is the duty of the clerk to enter in a book kept for that purpose the date, amount, and person in whose favor and for what purpose warrants are drawn upon the city treasury. The book is called "The Finance Book".

(2) This section does not apply to a city that has adopted the alternative accounting method provided for in Title 7, chapter 6, part 6.

History: En. Sec. 4784, Pol. C. 1895; re-en. Sec. 3253, Rev. C. 1907; re-en. Sec. 5033, R.C.M. 1921; Cal. Pol. C. Sec. 4393; re-en. Sec. 5033, R.C.M. 1935; R.C.M. 1947, 11-805(part); amd. Sec. 36, Ch. 430, L. 1995.

Compiler's Comments

1995 Amendment: Chapter 430 inserted (2) providing exception for city that has adopted alternative accounting method provided in Title 7, chapter 6, part 6; and made minor changes in style. Amendment effective April 13, 1995.

7-6-4108. Duties of town clerk related to finance — exception. (1) It is the duty of the town clerk:

(a) to receive all money that comes to the town, either from taxation or otherwise, and to pay the same out on the warrant of the mayor, countersigned by the clerk, drawn in accordance with law;

(b) to give every person paying money to the town clerk a receipt, specifying the date of payment, the amount, and for what paid;

(c) to pay out, in the order registered, all warrants presented for payment when there are funds in the treasury to pay the warrants.

(2) The statutory functions and duties of a town treasurer provided in this title are transferred to the town clerk. Any reference to a town treasurer means the town clerk.

(3) This section does not apply to a town that has adopted the alternative accounting method provided for in Title 7, chapter 6, part 6.

History: (1)En. 11-805.1 by Sec. 4, Ch. 146, L. 1974; Sec. 11-805.1, R.C.M. 1947; (2)En. 11-805.2 by Sec. 5, Ch. 146, L. 1974; Sec. 11-805.2, R.C.M. 1947; R.C.M. 1947, 11-805.1(part), 11-805.2; amd. Sec. 37, Ch. 430, L. 1995.

Compiler's Comments

1995 Amendment: Chapter 430 inserted (3) providing exception for clerk of town that has adopted alternative accounting method provided in Title 7, chapter 6, part 6; and made minor changes in style. Amendment effective April 13, 1995.

7-6-4109. Financial reports and records to be maintained by town clerk — exception. (1) It is the duty of the town clerk:

(a) to present to the council, on a date set by the council, a full and detailed statement of the amounts of money belonging to the town received by and disbursed by the clerk during the preceding month and the state of each particular fund, which statement must be verified by the clerk's oath;

(b) to keep the books and accounts of the city or town in a manner as to correctly present the condition of the finances of the city or town, which must always be open to the inspection of the mayor, the council, or any member of the council;

(c) to render at any time an account to the council, showing the money on hand and the condition of the treasury;

(d) to annually make out and submit to the town council, at its last meeting prior to May 1, a detailed account of all receipts and expenditures during the past fiscal year;

(e) to keep a separate account of each fund or appropriation and the debits and credits of the account; and

(f) to keep a register of all warrants paid, which must show the date, amount, and number and the person to whom and the fund from which the warrant was paid and to enter in a book kept for that purpose the date, amount, and person in whose favor and for what purpose warrants are drawn upon the town treasury.

(2) This section does not apply to a town that has adopted the alternative accounting method provided for in Title 7, chapter 6, part 6.

History: En. 11-805.1 by Sec. 4, Ch. 146, L. 1974; R.C.M. 1947, 11-805.1(part); amd. Sec. 2, Ch. 26, L. 1983; amd. Sec. 38, Ch. 430, L. 1995.

Compiler's Comments

1995 Amendment: Chapter 430 inserted (2) providing exception for clerk of town that has adopted alternative accounting method provided in Title 7, chapter 6, part 6; and made minor changes in style. Amendment effective April 13, 1995.

7-6-4110. Publication or posting of annual statement of receipts and expenditures — exception. (1) An abstract of the annual account of receipts and expenditures required by 7-6-4109(1)(d) must be published in some newspaper in the city or town, or if none is published, the abstract must be posted in the room or building occupied by the council.

(2) This section does not apply to a city or town that has adopted the alternative accounting method provided for in Title 7, chapter 6, part 6.

History: En. 11-805.1 by Sec. 4, Ch. 146, L. 1974; R.C.M. 1947, 11-805.1(part); amd. Sec. 39, Ch. 430, L. 1995.

Compiler's Comments

1995 Amendment: Chapter 430 in (1) substituted "7-6-4109(1)(d)" for "7-6-4109(4)"; inserted (2) providing exception from publishing requirement for city or town that has adopted alternative accounting method provided in Title 7, chapter 6, part 6; and made minor changes in style. Amendment effective April 13, 1995.

7-6-4111. Annual financial statement — exception. (1) Within 120 days after the close of each fiscal year, the city or town clerk of each city and town shall compile, in duplicate, a complete statement of the financial condition of the city or town for that fiscal year, showing:

(a) the indebtedness of the city or town, funded and floating; the amount of each class of indebtedness; and the amount of money in the treasury subject to the payment of each class of indebtedness;

(b) the amount of money received from taxes upon real and personal property;

(c) the amount of money received from fines, penalties, and forfeitures;

(d) the amount of money received from licenses;

(e) the amount of money received from all other sources, each source and the amount received from it being shown separately;

(f) for each fund, the amount of money, if any, on hand at the beginning of the fiscal year, the amount received, and the amount paid out during the fiscal year;

(g) a concise description of all property owned by the city or town, with an approximate estimate of the value of it;

(h) the rates of taxation and purposes for which taxes were levied during the fiscal year;

(i) other information that may be required by the department of commerce.

(2) The forms on which the statement must be made must be prescribed by the department.

(3) This section does not apply to a city or town that has adopted the alternative accounting method provided for in Title 7, chapter 6, part 6.

History: En. Sec. 1, Ch. 24, L. 1927; re-en. Sec. 5033.1, R.C.M. 1935; amd. Sec. 1, Ch. 19, L. 1945; amd. Sec. 48, Ch. 348, L. 1974; amd. Sec. 11, Ch. 213, L. 1975; R.C.M. 1947, 11-806(part); amd. Sec. 7, Ch. 274, L. 1981; amd. Sec. 1, Ch. 287, L. 1983; amd. Sec. 1, Ch. 44, L. 1987; amd. Sec. 40, Ch. 430, L. 1995.

Compiler's Comments

1995 Amendment: Chapter 430 inserted (3) providing exception from annual financial statement for city or town that has adopted alternative accounting method provided in Title 7, chapter 6, part 6; and made minor changes in style. Amendment effective April 13, 1995.

7-6-4112. Funds to be balanced — exception. (1) The amount of money paid out from each fund must be deducted from the total of the money on hand at the beginning of the fiscal year and the money received during the year, and a balance must be struck for each fund.

(2) This section does not apply to a city or town that has adopted the alternative accounting method provided for in Title 7, chapter 6, part 6.

History: **En. Sec. 1, Ch. 24, L. 1927; re-en. Sec. 5033.1, R.C.M. 1935; amd. Sec. 1, Ch. 19, L. 1945; amd. Sec. 48, Ch. 348, L. 1974; amd. Sec. 11, Ch. 213, L. 1975; R.C.M. 1947, 11-806(part); amd. Sec. 41, Ch. 430, L. 1995.**

Compiler's Comments

1995 Amendment: Chapter 430 inserted (2) providing exception for city or town that has adopted alternative accounting method provided in Title 7, chapter 6, part 6; and made minor changes in style. Amendment effective April 13, 1995.

7-6-4113. Filing of annual financial statement — exception. (1) The city or town clerk shall, within 120 days following the close of each fiscal year, transmit one copy of the statement to the department of commerce and shall present the other copy to the city or town council or commission.

(2) This section does not apply to a city or town that has adopted the alternative accounting method provided for in Title 7, chapter 6, part 6.

History: **En. Sec. 1, Ch. 24, L. 1927; re-en. Sec. 5033.1, R.C.M. 1935; amd. Sec. 1, Ch. 19, L. 1945; amd. Sec. 48, Ch. 348, L. 1974; amd. Sec. 11, Ch. 213, L. 1975; R.C.M. 1947, 11-806(3), (4); amd. Sec. 27, Ch. 252, L. 1979; amd. Sec. 7, Ch. 274, L. 1981; amd. Sec. 1, Ch. 287, L. 1983; amd. Sec. 1, Ch. 222, L. 1989; amd. Sec. 21, Ch. 489, L. 1991; amd. Sec. 7, Ch. 179, L. 1995; amd. Sec. 42, Ch. 430, L. 1995.**

Compiler's Comments

1995 Amendments: Chapter 179 deleted former (2) providing that on failure of a clerk to timely file a statement, the Department had to examine the records and make a statement of the financial condition of the city or town for the preceding year; and made minor changes in style. Amendment effective July 1, 1995.

Chapter 430 inserted (2) providing exception from filing requirement for city or town that has adopted alternative accounting method provided in Title 7, chapter 6, part 6; and made minor changes in style. Amendment effective April 13, 1995.

Cross-References

Strict accountability of local government finance, Art. VIII, sec. 12, Mont. Const.

7-6-4114 through 7-6-4118 reserved.

7-6-4119. Long-short cash account. (1) A governing body of a municipality may create a cash over or short account consistent with accepted accounting practice.

(2) This section does not apply to a municipality that has adopted the alternative accounting method provided for in Title 7, chapter 6, part 6.

History: **En. Sec. 2, Ch. 204, L. 1993; amd. Sec. 43, Ch. 430, L. 1995.**

Compiler's Comments

1995 Amendment: Chapter 430 inserted (2) providing exception for municipality that has adopted alternative accounting method provided in Title 7, chapter 6, part 6; and made minor changes in style. Amendment effective April 13, 1995.

7-6-4120. Appropriation of federal or state money by a city or town. (1) The council of a city or town may appropriate money received from the federal or state government regardless of when the money is received. The expenditure of the funds must comply with any applicable federal or state law, rule, or regulation governing the receipt or use of the money.

(2) The adopted appropriation must state the source of the money, the expenditure program for the funds, and the effective date of the appropriation.

History: **En. Sec. 1, Ch. 32, L. 1989.**

7-6-4121. Authorization to conduct municipal business on a cash basis. (1) In case the total indebtedness of a city or town has reached 17% of the total taxable value of the property of the city or town subject to taxation, as ascertained by the last assessment for state and county taxes, the city or town may conduct its affairs and business on a cash basis as provided by subsection (2).

(2) (a) Whenever a city or town is conducting its business affairs on a cash basis, the reasonable and necessary current expenses of the city or town may be paid out of the cash in the city or town treasury and derived from its current revenue, under any restrictions and regulations as the city or town council may by ordinance prescribe.

(b) In the event that payment is made in advance, the city or town may require a cash deposit as collateral security and indemnity, equal in amount to the payment, and may hold the deposit as a special deposit with the city treasurer or town clerk, in package form, as a pledge for the fulfillment and performance of the contract or obligation for which the advance is made.

(c) Before the payment of the current expenses mentioned above, the city or town council shall first set apart sufficient money to pay the interest upon its legal, valid, and outstanding bonded indebtedness and any sinking funds provided for and is authorized to pay all valid claims against funds raised by tax especially authorized by law for the purpose of paying the claims.

(3) This section does not apply to a city or town that has adopted the alternative accounting method provided for in Title 7, chapter 6, part 6.

History: (1)En. Sec. 4812, Pol. C. 1895; re-en. Sec. 2, Ch. 30, L. 1903; re-en. Sec. 3288, Rev. C. 1907; re-en. Sec. 5078, R.C.M. 1921; re-en. Sec. 5078, R.C.M. 1935; amd. Sec. 1, Ch. 55, L. 1957; amd. Sec. 25, Ch. 566, L. 1977; Sec. 11-1301, R.C.M. 1947; (2)En. Sec. 1, Ch. 30, L. 1903; re-en. Sec. 3287, Rev. C. 1907; re-en. Sec. 5079, R.C.M. 1921; re-en. Sec. 5079, R.C.M. 1935; amd. Sec. 2, Ch. 100, L. 1973; Sec. 11-1302, R.C.M. 1947; R.C.M. 1947, 11-1301(part), 11-1302(part); amd. Sec. 28, Ch. 252, L. 1979; amd. Sec. 41, Ch. 614, L. 1981; amd. Sec. 44, Ch. 430, L. 1995.

Compiler's Comments

1995 Amendment: Chapter 430 inserted (3) providing exception for city or town that has adopted alternative accounting method provided in Title 7, chapter 6, part 6; and made minor changes in style. Amendment effective April 13, 1995.

Cross-References

Legislature to provide debt limit, Art. VIII, sec. 10, Mont. Const.

7-6-4122. Manner of making payment for judgments against municipalities. (1) On the certificate of a justice of the peace or the clerk of the court in which any judgment is rendered, showing the amount of the judgment and the date of its entry, the council must by ordinance direct that the amount of such judgment be paid out of the general fund and that a warrant issue therefor on the general fund if there is sufficient money therein, exclusive of the appropriations for the current fiscal year, to pay the same.

(2) (a) The council must at the proper times levy and cause to be collected a tax on all the property of the city or town for the payment of such judgment within a period of 3 years from its presentation if there is not sufficient money as aforesaid in the general fund to pay the same.

(b) If any judgment rendered against any town or city exceeds the sum of $10,000, the council may fund the same as other indebtedness against the city or town is funded.

History: Ap. p. Sec. 5037, Pol. C. 1895; re-en. Sec. 3486, Rev. C. 1907; re-en. Sec. 5084, R.C.M. 1921; Cal. Pol. C. Sec. 4455; re-en. Sec. 5084, R.C.M. 1935; Sec. 11-1501, R.C.M. 1947; Ap. p. Sec. 5038, Pol. C. 1895; re-en. Sec. 3487, Rev. C. 1907; re-en. Sec. 5085, R.C.M. 1921, re-en. Sec. 5085, R.C.M. 1935; Sec. 11-1502, R.C.M. 1947; R.C.M. 1947, 11-1501, 11-1502.

Cross-References

Payment of judgments, 2-9-316.

7-6-4123. Procedure to transfer municipal funds. No money must be transferred from one fund to another except by ordinance or resolution of the council.

History: En. Sec. 2, Ch. 88, L. 1913; re-en. Sec. 5035, R.C.M. 1921; re-en. Sec. 5035, R.C.M. 1935; R.C.M. 1947, 11-808.

7-6-4124. Procedure to close inactive accounts. (1) Whenever the council of any city or town having a corporate existence in this state considers it necessary to remove inactive accounts from its records when the accounts do not have any further purpose, it is lawful for the council to direct the proper city or town officials to file claims against the respective inactive funds in favor of the general fund of the city or town, after which the council shall allow the claims and cause the inactive funds to be closed and not continued in the record of active funds.

(2) This section does not apply to a city or town that has adopted the alternative accounting method provided for in Title 7, chapter 6, part 6.

History: En. Sec. 1, Ch. 57, L. 1939; R.C.M. 1947, 11-809; amd. Sec. 45, Ch. 430, L. 1995.

Compiler's Comments

1995 Amendment: Chapter 430 inserted (2) providing exception for city or town that has adopted alternative accounting method provided in Title 7, chapter 6, part 6; and made minor changes in style. Amendment effective April 13, 1995.

7-6-4125 through 7-6-4130 reserved.

7-6-4131. Allocation and appropriation of all-purpose levy — exception. (1) When the all-purpose levy method provided for in 7-6-4452 is followed in municipal financing, any municipality following it shall appropriate the levy to the several departments of the municipality in its annual budget and appropriation ordinance or in other legal manner, as the governing body of the municipality considers best.

(2) Any municipality that has adopted an urban renewal plan may allocate the funds raised by its levy within the urban renewal area in accordance with the provisions of its urban renewal plan.

(3) This section does not apply to a municipality that has adopted the alternative accounting method provided for in Title 7, chapter 6, part 6.

History: En. Sec. 3, Ch. 82, L. 1965; amd. Sec. 3, Ch. 375, L. 1971; amd. Sec. 6, Ch. 287, L. 1974; R.C.M. 1947, 84-4701.3; amd. Sec. 46, Ch. 430, L. 1995.

Compiler's Comments

1995 Amendment: Chapter 430 inserted (3) providing exception for municipality that has adopted alternative accounting method provided in Title 7, chapter 6, part 6; and made minor changes in style. Amendment effective April 13, 1995.

Cross-References

Urban renewal, Title 7, ch. 15, part 42.

7-6-4132. Distribution of all-purpose levy — exception. (1) The money received from the all-purpose levy must be accounted for in a common fund known as the all-purpose general fund.

(2) This section does not apply to a municipality that has adopted the alternative accounting method provided for in Title 7, chapter 6, part 6.

History: En. Sec. 2, Ch. 82, L. 1965; amd. Sec. 2, Ch. 226, L. 1969; amd. Sec. 2, Ch. 226, L. 1969; amd. Sec. 2, Ch. 375, L. 1971; amd. Sec. 57, Ch. 566, L. 1977; R.C.M. 1947, 84-4701.2(part); amd. Sec. 47, Ch. 430, L. 1995.

Compiler's Comments

1995 Amendment: Chapter 430 inserted (2) providing exception for municipality that has adopted alternative accounting method provided in Title 7, chapter 6, part 6; and made minor changes in style. Amendment effective April 13, 1995.

7-6-4133. Deposit of revenues from certain sources in all-purpose fund — exception. (1) Cities and towns making the all-purpose annual mill levy shall deposit into the all-purpose general fund all money received from other sources, including fees, charges, and fines received from the operation of airports, libraries, swimming pools, parking lots, golf courses, and any other operation supported in part or whole from an appropriation of the all-purpose levy and not otherwise provided by law.

(2) This section does not apply to a city or town that has adopted the alternative accounting method provided for in Title 7, chapter 6, part 6.

History: En. Sec. 1, Ch. 131, L. 1973; R.C.M. 1947, 11-1414; amd. Sec. 48, Ch. 430, L. 1995.

Compiler's Comments

1995 Amendment: Chapter 430 inserted (2) providing exception for city or town that has adopted alternative accounting method provided in Title 7, chapter 6, part 6; and made minor changes in style. Amendment effective April 13, 1995.

7-6-4134. Capital improvement program fund. An amount not to exceed 5% of the money received from and as a part of the aforesaid all-purpose levy may be placed in a separate fund, known as the capital improvement program fund, to be earmarked for the replacement and acquisition of property, plant, or equipment costing in excess of $5,000, with a life expectancy of 5 years or more, provided that a capital improvement program has been formally adopted by city or town ordinance.

History: En. Sec. 2, Ch. 82, L. 1965; amd. Sec. 2, Ch. 226, L. 1969; amd. Sec. 2, Ch. 226, L. 1969; amd. Sec. 2, Ch. 375, L. 1971; amd. Sec. 57, Ch. 566, L. 1977; R.C.M. 1947, 84-4701.2(2).

7-6-4135. Investment of money in capital improvement program fund. The money held in the capital improvement program fund must, whenever possible, be invested in savings or time deposits in a state or national bank, savings and loan association, or credit union insured by the federal deposit insurance corporation or by the national credit union administration or invested in direct obligations of the United States government and must be credited to the fund plus interest earned.

History: En. Sec. 2, Ch. 82, L. 1965; amd. Sec. 2, Ch. 226, L. 1969; amd. Sec. 2, Ch. 226, L. 1969; amd. Sec. 2, Ch. 375, L. 1971; amd. Sec. 57, Ch. 566, L. 1977; R.C.M. 1947, 84-4701.2(3); amd. Sec. 6, Ch. 421, L. 1985; amd. Sec. 12, Ch. 10, L. 1993.

Cross-References

Deposit and investment of public money, Title 7, ch. 6, part 2.

State unified investment program, Title 17, ch. 6, part 2.

Montana Health Facility Authority bonds — legal investment, 90-7-113.

Part 42
Municipal Budget Law

Part Cross-References

Resort community tax, 7-6-4462.

7-6-4201. Short title. This part may be referred to as the "Municipal Budget Law".

History: En. Sec. 1, Ch. 121, L. 1931; re-en. Sec. 5083.1, R.C.M. 1935; R.C.M. 1947, 11-1401(part).

7-6-4202. Definitions. As used in this part, the following definitions apply:

(1) The term "clerk" means the clerk of the city.

(2) The term "council" means the city council or city commission.

(3) The term "municipal corporation" or "municipality" means the city.

(4) The term "treasurer" means the city treasurer.

History: (1) thru (3)En. Sec. 1, Ch. 121, L. 1931; re-en. Sec. 5083.1, R.C.M. 1935; Sec. 11-1401, R.C.M. 1947; (4)En. by Code Commissioner, 1979; R.C.M. 1947, 11-1401(part); amd. Sec. 9, Ch. 16, L. 1991.

7-6-4203. Scope of part. The provisions of this part apply to all cities or towns in this state, except for cities and towns that have adopted the alternative accounting method provided for in Title 7, chapter 6, part 6.

History: En. Sec. 1, Ch. 121, L. 1931; re-en. Sec. 5083.1, R.C.M. 1935; R.C.M. 1947, 11-1401(part); amd. Sec. 49, Ch. 430, L. 1995.

Compiler's Comments

1995 Amendment: Chapter 430 after "cities" inserted "or towns" and after "state" inserted exception clause relating to adoption of alternative accounting method. Amendment effective April 13, 1995.

Cross-References

Chapter applies to local government units having self-government powers, 7-1-114.

7-6-4204. Construction of part. This part shall not be construed to create any new fund or funds or to authorize a levy to be made for any fund in excess of the limitation prescribed by existing law or acts amendatory thereof.

History: En. Sec. 11, Ch. 121, L. 1931; re-en. Sec. 5083.11, R.C.M. 1935; R.C.M. 1947, 11-1412.

7-6-4205. Role of department of commerce. The department of commerce shall make rules and classifications and prescribe forms necessary to carry out the provisions of this part. It shall define what expenditures are chargeable to each budget account and shall establish accounting and cost systems necessary to provide accurate budget information. This section does not apply to a city or town that has adopted the alternative accounting method provided for in Title 7, chapter 6, part 6.

History: En. Sec. 2, Ch. 121, L. 1931; re-en. Sec. 5083.2, R.C.M. 1935; R.C.M. 1947, 11-1411; amd. Sec. 7, Ch. 274, L. 1981; amd. Sec. 1, Ch. 287, L. 1983; amd. Sec. 50, Ch. 430, L. 1995.

Compiler's Comments

1995 Amendment: Chapter 430 inserted third sentence providing exception for city or town that has adopted alternative accounting method. Amendment effective April 13, 1995.

Cross-References

Strict financial accountability required, Art. VIII, sec. 12, Mont. Const.

7-6-4206. Violations. Any person violating any of the provisions of this part shall be guilty of a misdemeanor.

History: En. Sec. 12, Ch. 121, L. 1931; re-en. Sec. 5083.12, R.C.M. 1935; R.C.M. 1947, 11-1413.

Cross-References

Misdemeanors, 46-18-212.

7-6-4207 through 7-6-4220 reserved.

7-6-4221. Filing of estimate of revenues and expenses with clerk — exception. (1) Before July 1 of each year, the clerk of each city shall notify in writing each official in charge of an office, department, service, or institution of the municipality to file with the clerk, before July 10, detailed and itemized estimates, both of the probable revenues from sources other than taxation and of all expenditures required by the office, department, service, or institution for the current fiscal year.

(2) (a) The council shall submit to the clerk the estimate of expenditures for all purposes for the council. The council shall also submit to the clerk detailed estimates of all expenditures for construction or improvement purposes proposed to be made from the proceeds of bond issues not yet authorized and from the proceeds of tax levies that are required to be submitted and approved at an election to be held.

(b) The mayor of the municipality shall submit to the clerk a detailed estimate showing the amount to be appropriated from funds belonging to the municipality to defray the municipality's portion of the cost of making improvements in special improvement districts and maintaining them and of installing lighting systems in special lighting districts and maintaining them.

(c) The city treasurer shall prepare the estimates for interest and debt reduction.

(d) The clerk shall prepare all other estimates that properly fall within the duties of the clerk's office.

(3) The estimates required in this section must be submitted on forms provided by the clerk and prescribed by the department of commerce. The form may be varied or departed from only with permission and approval of the department. Each of the officials shall file the estimates within the time and in the manner provided in the form and notice.

(4) In the absence or disability of an official, the duties required in this section or 7-6-4223 devolve upon the official or employee in charge of the office, department, service, or institution for the time being.

(5) This section does not apply to a city that has adopted the alternative accounting method provided for in Title 7, chapter 6, part 6.

History: En. Sec. 3, Ch. 121, L. 1931; re-en. Sec. 5083.3, R.C.M. 1935; amd. Sec. 49, Ch. 348, L. 1974; amd. Sec. 12, Ch. 213, L. 1975; R.C.M. 1947, 11-1403(part); amd. Sec. 7, Ch. 274, L. 1981; amd. Sec. 1, Ch. 287, L. 1983; amd. Sec. 51, Ch. 430, L. 1995.

Compiler's Comments

1995 Amendment: Chapter 430 inserted (5) providing exception for city that has adopted alternative accounting method provided in Title 7, chapter 6, part 6; and made minor changes in style. Amendment effective April 13, 1995.

7-6-4222. Exclusion of certain items from estimate and budget. There may not be included in the estimate or in either the preliminary or final budget of a municipality any part of that cost which is to be paid by special assessments against the property within the districts or any part of the cost in maintenance districts which is to be defrayed by special assessments against the property in the maintenance districts.

History: En. Sec. 3, Ch. 121, L. 1931; re-en. Sec. 5083.3, R.C.M. 1935; amd. Sec. 49, Ch. 348, L. 1974; amd. Sec. 12, Ch. 213, L. 1975; R.C.M. 1947, 11-1403(part); amd. Sec. 2, Ch. 212, L. 1983.

Cross-References

Maintenance districts, Title 7, ch. 12, part 44.

7-6-4223. Penalty for noncompliance with filing requirements — exception. (1) The clerk shall deduct and withhold as a penalty from the salary or compensation of each official failing or refusing to file the estimate the sum of $10 for each day of delay. The total penalty against an official may not exceed $50 per year.

(2) The notice provided for in 7-6-4221 must contain a copy of this penalty clause.

(3) This section does not apply to a city or town that has adopted the alternative accounting method provided for in Title 7, chapter 6, part 6.

History: En. Sec. 3, Ch. 121, L. 1931; re-en. Sec. 5083.3, R.C.M. 1935; amd. Sec. 49, Ch. 348, L. 1974; amd. Sec. 12, Ch. 213, L. 1975; R.C.M. 1947, 11-1403(part); amd. Sec. 52, Ch. 430, L. 1995.

Compiler's Comments

1995 Amendment: Chapter 430 inserted (3) providing exception from requirement to impose penalty for city or town that has adopted alternative accounting method provided in Title 7, chapter 6, part 6; and made minor changes in style. Amendment effective April 13, 1995.

7-6-4224. Preparation of expenditure program and information on sources of revenue — exception. (1) From estimates of revenue and disbursements, the clerk shall prepare a tabulation showing the complete expenditure program of the municipality for the current fiscal year and the sources of revenue by which it is to be financed.

(2) The tabulation must set forth:

(a) the estimated receipts from all sources other than taxation for each office, department, service, or institution for the current fiscal year;

(b) the actual receipts for the last completed fiscal year;

(c) the surplus or unencumbered treasury balances at the close of that last fiscal year;

(d) the amount necessary to be raised by taxation;

(e) the estimated expenditure for each office, department, service, or institution for the current fiscal year;

(f) the actual expenditures for the last completed fiscal year;

(g) all contracts or other obligations that will affect the current year revenue;

(h) the total amount of emergency warrants issued during the preceding fiscal year, with the amount issued for each emergency and the amount issued against each fund.

(3) This section does not apply to a municipality that has adopted the alternative accounting method provided for in Title 7, chapter 6, part 6.

History: En. Sec. 4, Ch. 121, L. 1931; re-en. Sec. 5083.4, R.C.M. 1935; amd. Sec. 50, Ch. 348, L. 1974; amd. Sec. 13, Ch. 213, L. 1975; R.C.M. 1947, 11-1404(1), (4); amd. Sec. 53, Ch. 430, L. 1995.

Compiler's Comments

1995 Amendment: Chapter 430 inserted (3) providing exception for municipality that has adopted alternative accounting method provided in Title 7, chapter 6, part 6; and made minor changes in style. Amendment effective April 13, 1995.

7-6-4225. Classification of estimates, appropriations, and expenditures — exception. (1) In the tabulation required by 7-6-4224, the estimates, appropriations, and expenditures must be classified as:

(a) salaries and wages;

(b) maintenance and operation;
(c) capital outlay;
(d) interest and debt redemption;
(e) miscellaneous; and
(f) expenditures proposed to be made from bond issues not yet authorized or from the proceeds of a tax levy or levies that are required to be submitted and approved at an election to be held later.

(2) (a) Within the class of salaries and wages, each salary must be set forth separately, together with the title or position of the recipient. An unitemized appropriation may be made to cover the expenses of special deputies or assistants in an office in which the services of the special deputies or assistants may be required during a part of the fiscal year only. Wages for day labor may be given in totals by designating the general purpose or object for which the expenditure is to be made, but the proposed rate per day for each class or kind of labor must be set forth.

(b) Expenditures under the general class of maintenance and operation must be classified according to a standard classification to be established by the department of commerce.

(c) Expenditures for capital outlay must set forth and describe each object of expenditure separately.

(d) Under the general class of interest and debt redemption, proposed expenditures for interest and for redemption of principal must be set forth separately for each series or issue of bonds, and warrant interest and redemption requirements must be set forth in a similar manner.

(e) Under the general class of miscellaneous, expenditures for all purposes not listed in or that cannot properly be assigned to any of the general classes must be set forth and itemized in detail.

(3) This section does not apply to a municipality that has adopted the alternative accounting method provided for in Title 7, chapter 6, part 6.

History: En. Sec. 4, Ch. 121, L. 1931; re-en. Sec. 5083.4, R.C.M. 1935; amd. Sec. 50, Ch. 348, L. 1974; amd. Sec. 13, Ch. 213, L. 1975; R.C.M. 1947, 11-1404(2), (3); amd. Sec. 7, Ch. 274, L. 1981; amd. Sec. 1, Ch. 287, L. 1983; amd. Sec. 54, Ch. 430, L. 1995.

Compiler's Comments

1995 Amendment: Chapter 430 inserted (3) providing exception from classification requirement for municipality that has adopted alternative accounting method provided in Title 7, chapter 6, part 6; and made minor changes in style. Amendment effective April 13, 1995.

7-6-4226. Consideration of tabulation by council — preparation of preliminary budget — exception. (1) The tabulation must be submitted to the council by the clerk on or before July 20.

(2) Upon receipt of the tabulation, the council shall immediately consider the tabulation in detail and shall, on or before July 25, make any revisions, reductions, additions, or changes that the council considers advisable. The tabulation, with any revisions, reductions, additions, or changes, constitutes the preliminary budget of the municipality for the fiscal year which it is intended to cover.

(3) This section does not apply to a municipality that has adopted the alternative accounting method provided for in Title 7, chapter 6, part 6.

History: En. Sec. 5, Ch. 121, L. 1931; re-en. Sec. 5083.5, R.C.M. 1935; R.C.M. 1947, 11-1405(part); amd. Sec. 55, Ch. 430, L. 1995.

Compiler's Comments

1995 Amendment: Chapter 430 inserted (3) providing exception for municipality that has adopted alternative accounting method provided in Title 7, chapter 6, part 6; and made minor changes in style. Amendment effective April 13, 1995.

7-6-4227. Notice of hearing on preliminary budget — exception. (1) The council shall publish a notice stating that:

(a) the council has completed its preliminary municipal budget for the current fiscal year;

(b) the budget has been placed on file and is open to inspection in the office of the clerk of the municipality;

(c) the council will meet for the purpose of fixing the final budget and making appropriations, designating the date, time, and place that the meeting will be held; and

(d) any taxpayer or resident may appear at the meeting and be heard for or against any part of the budget.

(2) The notice must be published at least one time in the official newspaper of the municipality or, if there is none, then in a newspaper of general circulation in the county in which the municipality is situated.

(3) This section does not apply to a municipality that has adopted the alternative accounting method provided for in Title 7, chapter 6, part 6.

History: En. Sec. 5, Ch. 121, L. 1931; re-en. Sec. 5083.5, R.C.M. 1935; R.C.M. 1947, 11-1405(part); amd. Sec. 29, Ch. 252, L. 1979; amd. Sec. 4, Ch. 84, L. 1989; amd. Sec. 56, Ch. 430, L. 1995.

Compiler's Comments

1995 Amendment: Chapter 430 inserted (3) providing exception from notice requirement for municipality that has adopted alternative accounting method provided in Title 7, chapter 6, part 6; and made minor changes in style. Amendment effective April 13, 1995.

Cross-References

Right of participation in governmental affairs, Art. II, sec. 8, Mont. Const.

Publication of notice, 7-1-4127.

7-6-4228. Hearing on preliminary budget — exception. (1) At least 3 days prior to the adoption of the final budget, the council shall meet at the time and place designated in the notice provided in 7-6-4227, at which time any taxpayer or resident may appear and be heard for or against any part of the budget. The council may call in the official in charge of an office, department, service, or institution, at the time the estimates for each respective office is under consideration, for examination concerning the estimates. The official must be called in by the council, upon the request of a taxpayer or resident, for questioning upon the estimates by the council, taxpayer, or resident.

(2) The hearing must be continued from day to day and must be concluded and the budget finally approved and adopted on or before the second Monday in August, prior to the fixing of the tax levies by the council.

(3) This section does not apply to a municipality that has adopted the alternative accounting method provided for in Title 7, chapter 6, part 6.

History: En. Sec. 6, Ch. 121, L. 1931; re-en. Sec. 5083.6, R.C.M. 1935; amd. Sec. 1, Ch. 129, L. 1941; amd. Sec. 51, Ch. 348, L. 1974; amd. Sec. 14, Ch. 213, L. 1975; R.C.M. 1947, 11-1406(1); amd. Sec. 30, Ch. 252, L. 1979; amd. Sec. 5, Ch. 84, L. 1989; amd. Sec. 57, Ch. 430, L. 1995.

Compiler's Comments

1995 Amendment: Chapter 430 inserted (3) providing exception from hearing requirement for municipality that has adopted alternative accounting method provided in Title 7, chapter 6, part 6; and made minor changes in style. Amendment effective April 13, 1995.

7-6-4229. Determination of projected fund cash flow following hearing — exception. (1) Upon the conclusion of the hearing, the council shall first determine the amount estimated to accrue to each fund during the fiscal year from all sources except the taxation of property. In so doing, the council may not include any amount anticipated from the payment of taxes that became delinquent during a preceding fiscal year.

(2) The council shall then determine separately the amount appropriated for and authorized to be spent for each item in the budget and shall specify the fund against which warrants are to be drawn for the expenditures. There may not be added to the amount appropriated and authorized to be spent for an item or purpose or to the total amount appropriated and authorized to be spent from any fund, other than a fund for the payment of principal or interest on outstanding bonds, any amount because of anticipated loss of revenue by reason of nonpayment of taxes levied for the fiscal year. The expenditures authorized from a fund, including reserve, may not exceed the aggregate of:

(a) the cash balance in the fund at the close of the preceding fiscal year in excess of outstanding unpaid warrants against the fund at the close of that fiscal year;

(b) the amount of estimated revenue to accrue to the fund; and

(c) the amount that may be raised for the fund by a lawful tax levy during the fiscal year.

(3) This section does not apply to a municipality that has adopted the alternative accounting method provided for in Title 7, chapter 6, part 6.

History: En. Sec. 6, Ch. 121, L. 1931; re-en. Sec. 5083.6, R.C.M. 1935; amd. Sec. 1, Ch. 129, L. 1941; amd. Sec. 51, Ch. 348, L. 1974; amd. Sec. 14, Ch. 213, L. 1975; R.C.M. 1947, 11-1406(2); amd. Sec. 58, Ch. 430, L. 1995.

Compiler's Comments

1995 Amendment: Chapter 430 inserted (3) providing exception for municipality that has adopted alternative accounting method provided in Title 7, chapter 6, part 6; and made minor changes in style. Amendment effective April 13, 1995.

7-6-4230. Determination of fund requirements to be met by tax levy — exception. (1) Following the determinations required by 7-6-4229, the council shall determine the amount to be raised for each fund for which a tax levy is to be made by adding the cash balance in excess of outstanding unpaid warrants at the close of the preceding fiscal year and the amount of the estimated revenues, if any, to accrue to the fund during the current fiscal year. It shall then deduct the total amount so obtained from the total amount of the appropriations and authorized expenditures from the fund as determined by the council in the budget adopted and approved. The amount remaining is the amount necessary to be raised for any fund by tax levy during the current fiscal year.

(2) The council may add to the amount necessary to be raised for any fund by tax levy during the current fiscal year an additional amount as a reserve to meet expenditures to be made from the fund during the months of July to November of the next fiscal year. The amount added to any fund as a reserve may not exceed one-third of the total amount appropriated and authorized to be spent from the fund during the current fiscal year, after deducting from the amount of the appropriations and authorized expenditures the total amount

appropriated and authorized to be spent for election expenses and payment of emergency and other outstanding warrants.

(3) The total amount to be raised by tax levy for any fund during the current fiscal year, including the amount of the reserve, may not exceed the total amount that may be raised for the fund by a tax levy that does not exceed the maximum levy permitted by law to be made for the fund.

(4) This section does not apply to a municipality that has adopted the alternative accounting method provided for in Title 7, chapter 6, part 6.

History: En. Sec. 6, Ch. 121, L. 1931; re-en. Sec. 5083.6, R.C.M. 1935; amd. Sec. 1, Ch. 129, L. 1941; amd. Sec. 51, Ch. 348, L. 1974; amd. Sec. 14, Ch. 213, L. 1975; R.C.M. 1947, 11-1406(3); amd. Sec. 59, Ch. 430, L. 1995.

Compiler's Comments

1995 Amendment: Chapter 430 inserted (4) providing exception for municipality that has adopted alternative accounting method provided in Title 7, chapter 6, part 6; and made minor changes in style. Amendment effective April 13, 1995.

Cross-References

Statement of levy — in mills, 15-10-201.

7-6-4231. Final budget — approval, adoption, and amendment — exception. (1) The budget as finally determined, in addition to setting out separately each item for which an appropriation is made or expenditure authorized and the fund out of which it is to be paid, must set out:

(a) the total amount appropriated and authorized to be spent from each fund;

(b) the cash balance in excess of outstanding unpaid warrants at the close of the preceding fiscal year;

(c) the amount estimated to accrue to the fund from sources other than taxation;

(d) the reserve for the next fiscal year; and

(e) the amount necessary to be raised for each fund by tax levy during the current fiscal year.

(2) The council shall then by resolution approve and adopt the budget as finally determined, and the clerk shall enter the resolution at length in the official minutes of the council. The clerk shall keep a copy of the budget with the resolution in the official records of the municipality.

(3) (a) Subject to compliance with the procedures set forth in subsection (4), the council may approve and adopt a resolution amending a final budget when:

(i) shortfalls in anticipated and budgeted revenues occur that, unless reductions in appropriations are made, will result in expenditures for the year exceeding actual revenue and cash balances available; or

(ii) savings result from unanticipated adjustments in projected expenditures.

(b) Amended appropriations must be classified as:

(i) salaries and wages;

(ii) maintenance and operation;

(iii) capital outlay;

(iv) interest and debt redemption; or

(v) miscellaneous.

(4) Prior to amending a final budget, the council shall:

(a) hold a public hearing on the proposed amendments at least 7 days prior to a vote on the resolution amending the budget; and

(b) publish notice at least once in a newspaper of general circulation in the city or town at least 6 but not more than 16 days before the hearing on the budget amendments. The published notice must specify the date, time, place, and subject of the hearing.

(5) This section does not apply to a municipality that has adopted the alternative accounting method provided for in Title 7, chapter 6, part 6.

History: En. Sec. 6, Ch. 121, L. 1931; re-en. Sec. 5083.6, R.C.M. 1935; amd. Sec. 1, Ch. 129, L. 1941; amd. Sec. 51, Ch. 348, L. 1974; amd. Sec. 14, Ch. 213, L. 1975; R.C.M. 1947, 11-1406(4); amd. Sec. 3, Ch. 702, L. 1983; amd. Sec. 1, Ch. 7, L. 1989; amd. Sec. 60, Ch. 430, L. 1995.

Compiler's Comments

1995 Amendment: Chapter 430 inserted (5) providing exception for municipality that has adopted alternative accounting method provided in Title 7, chapter 6, part 6; and made minor changes in style. Amendment effective April 13, 1995.

7-6-4232. Fixing of tax levy — exception. (1) On or before the second Monday in August and after the approval and adoption of the final budget, the council shall fix the tax levy for each fund at a rate, not exceeding limits prescribed by law, that will raise the amount set out in the budget as the amount necessary to be raised by tax levy for that fund during the current fiscal year. The taxable valuation of the city for the current fiscal year must be the basis for determining the amount of the tax levy for each fund, and each tax levy must be at a rate not higher than is required on that basis, without including any amount for anticipated tax delinquency, to raise the amount set out in the budget.

(2) If the council considers that a levy made for a bond sinking or interest fund will not provide a sufficient amount to pay all bond principal and interest becoming due during the current fiscal year or within 6 months after the current fiscal year because of anticipated tax delinquency, the council may fix the levy at a rate it considers necessary to raise the amount for making the payments of principal and interest over and above the anticipated tax delinquency.

(3) Each levy must be made in the manner provided by 15-10-201.

(4) This section does not apply to a municipality that has adopted the alternative accounting method provided for in Title 7, chapter 6, part 6.

History: En. Sec. 6, Ch. 121, L. 1931; re-en. Sec. 5083.6, R.C.M. 1935; amd. Sec. 1, Ch. 129, L. 1941; amd. Sec. 51, Ch. 348, L. 1974; amd. Sec. 14, Ch. 213, L. 1975; R.C.M. 1947, 11-1406(5); amd. Sec. 31, Ch. 252, L. 1979; amd. Sec. 2, Ch. 726, L. 1985; amd. Sec. 4, Ch. 26, Sp. L. June 1986; amd. Sec. 6, Ch. 84, L. 1989; amd. Sec. 61, Ch. 430, L. 1995.

Compiler's Comments

1995 Amendment: Chapter 430 inserted (4) providing exception form requirement to fix levy for municipality that has adopted alternative accounting method provided in Title 7, chapter 6, part 6; and made minor changes in style. Amendment effective April 13, 1995.

Cross-References

Payment of taxes under protest — payment to municipality after first year, 15-1-402.

7-6-4233. Budget and tax levies to be supplied to department of commerce. (1) The city clerk shall, not later than September 15, forward a complete copy of the final budget, together with the tax levies, to the department of commerce.

(2) If a city clerk fails to forward the copy of the budget to the department within the time required, the department shall, before October 1, notify the mayor and council of the city that a copy of the budget has not been forwarded by the city clerk. The council must then withhold from the city clerk his salary or compensation for the month of September until the city clerk presents the council with a notice from the department that the copy of the budget has been received.

History: En. Sec. 6, Ch. 121, L. 1931; re-en. Sec. 5083.6, R.C.M. 1935; amd. Sec. 1, Ch. 129, L. 1941; amd. Sec. 51, Ch. 348, L. 1974; amd. Sec. 14, Ch. 213, L. 1975; R.C.M. 1947, 11-1406(6); amd. Sec. 7, Ch. 274, L. 1981; amd. Sec. 1, Ch. 287, L. 1983.

7-6-4234. Effect of exceeding budget appropriations — personal liability. (1) Expenditures made, liabilities incurred, or warrants issued in excess of any of the detailed budget appropriations, as originally determined or as thereafter revised by transfer as provided in this part, shall not be a liability of the municipality, but the official making or incurring such expenditure or issuing such warrant shall be liable therefor personally and upon his official bond.

(2) (a) The council shall not approve any claim and the clerk shall not issue any warrant for any expenditure in excess of said detailed budget appropriations, as finally adopted or as revised under the provisions of this part, except upon an order of a court of competent jurisdiction or for an emergency as hereinafter provided. Any municipal officer or officers approving any claim or issuing any warrant in excess of any such budget appropriation except as above provided shall forfeit to the city fourfold the amount of such claim or warrant.

(b) The amount forfeited under subsection (2)(a) shall be recovered in an action against such officer or officers or all of them and their several sureties on their official bonds. It shall be the duty of the city attorney to bring an action therefor in the name of the municipal corporation.

History: En. Sec. 7, Ch. 121, L. 1931; re-en. Sec. 5083.7, R.C.M. 1935; amd. Sec. 1, Ch. 95, L. 1957; R.C.M. 1947, 11-1408(3).

Cross-References

Judgments against municipality — how paid, 2-9-316, 7-6-4122.

7-6-4235. Limitations on appropriations after budget adopted — exception. (1) The estimates of expenditures, itemized and classified as required in 7-6-4224 and 7-6-4225 and as finally fixed and adopted and as may be amended as provided in 7-6-4231 by the council, constitute the appropriations for the municipality for the fiscal year intended to be covered by the estimates.

(2) Except as provided in 7-6-4236, the council and each other municipal official is limited in the making of expenditures or incurring of liabilities to the amount of the detailed appropriations and classifications, respectively.

(3) This section does not apply to a municipality that has adopted the alternative accounting method provided for in Title 7, chapter 6, part 6.

History: En. Sec. 7, Ch. 121, L. 1931; re-en. Sec. 5083.7, R.C.M. 1935; amd. Sec. 1, Ch. 95, L. 1957; R.C.M. 1947, 11-1408(part); amd. Sec. 4, Ch. 702, L. 1983; amd. Sec. 62, Ch. 430, L. 1995.

Compiler's Comments

1995 Amendment: Chapter 430 inserted (3) providing exception from appropriations limitations for municipality that has adopted alternative accounting method provided in Title 7, chapter 6, part 6; and made minor changes in style. Amendment effective April 13, 1995.

7-6-4236. Transfer of appropriations within and among expenditure classes. (1) Upon a resolution adopted by the council at a regular or special meeting and entered upon its minutes, transfers or revisions within or among the general class or classes of salaries and wages, maintenance and support, and capital outlay may be made, provided that a salary may not be increased above the amount appropriated.

(2) This section does not apply to a municipality that has adopted the alternative accounting method provided for in Title 7, chapter 6, part 6.

History: En. Sec. 7, Ch. 121, L. 1931; re-en. Sec. 5083.7, R.C.M. 1935; amd. Sec. 1, Ch. 95, L. 1957; R.C.M. 1947, 11-1408(part); amd. Sec. 1, Ch. 485, L. 1985; amd. Sec. 63, Ch. 430, L. 1995.

Compiler's Comments

1995 Amendment: Chapter 430 inserted (2) providing exception for municipality that has adopted alternative accounting method provided in Title 7, chapter 6, part 6; and made minor changes in style. Amendment effective April 13, 1995.

7-6-4237. Use of bond proceeds and borrowed money. (1) Money received from borrowing shall be used for no other purpose than that for which borrowed, except that if any surplus remains after the accomplishment of the purpose for which borrowed, it shall be used to redeem the municipal debt.

(2) Where any budget shall contain an expenditure program to be financed from a bond issue to be authorized thereafter, no expenditure shall be made or obligation incurred thereunder until such bonds have been duly authorized and the proceeds are available.

(3) The authorization of a bond issue by the electors or by the governing body of the city where an election is not required shall constitute an appropriation of the bond proceeds to the purpose for which the bonds are authorized, whether or not such purpose is included in a budget previously adopted, but no warrants shall be drawn, expenditures made, or obligations incurred in excess of such appropriation except pursuant to an additional appropriation included in a regularly adopted budget.

History: En. Sec. 7, Ch. 121, L. 1931; re-en. Sec. 5083.7, R.C.M. 1935; amd. Sec. 1, Ch. 95, L. 1957; R.C.M. 1947, 11-1408(part).

7-6-4238. Restriction on tax-financed expenditures if voter approval of tax levy required. Where any expenditure program is to be financed from a tax levy required to be authorized and approved at an election, no expenditure shall be made or obligation incurred thereunder until such levy is so authorized and approved.

History: En. Sec. 7, Ch. 121, L. 1931; re-en. Sec. 5083.7, R.C.M. 1935; amd. Sec. 1, Ch. 95, L. 1957; R.C.M. 1947, 11-1408(part).

7-6-4239. Procedure when there exist unpaid and outstanding warrants at end of fiscal year. (1) When at the end of any fiscal year any city has warrants outstanding and registered against any fund, other than warrants issued by reason of any emergency budget or budgets, and is without sufficient cash in such fund to pay the same with interest thereon, the city council must, in the annual budget for such fund for the immediately following fiscal year, make an appropriation to pay such warrants or a substantial part thereof with the interest thereon. The amount of such appropriation shall be fixed and determined by the city council but must, in any event, be at least 10% of the amount which the levy for the fund will produce if the amount of such outstanding and registered warrants, with interest thereon, equals or exceeds such amount.

(2) When at the end of any fiscal year any city has outstanding registered emergency warrants against any fund issued by reason of any emergency budget or budgets and is without sufficient cash in such fund to pay the same with interest thereon, the city council must, in the annual budget for such fund for the immediately following fiscal year, make an appropriation sufficient to pay such warrants with interest thereon.

(3) None of the provisions of this section shall be construed as authorizing a levy to be made for any fund in excess of the limitation prescribed by existing law or acts hereafter enacted amendatory thereof.

History: En. Sec. 1, Ch. 53, L. 1943; re-en. Sec. 5083.6A, R.C.M. 1935; R.C.M. 1947, 11-1407.

Cross-References

Interest on warrants — decision of governing body, 17-5-102.

7-6-4240. Lapse of appropriation. (1) Subject to the provisions of subsection (2), all appropriations, other than the appropriations for uncompleted improvements in progress of construction, lapse at the end of the fiscal year.

(2) (a) The appropriation accounts must remain open for a period of 30 days after the end of the fiscal year for the payment of claims incurred against the appropriations prior to the close of the fiscal year and remaining unpaid. After the 30-day period has expired, all appropriations, except as otherwise provided regarding uncompleted improvements, become null and void, and any lawful claim presented against any appropriation must be provided for in the ensuing budget.

(b) Subsection (2)(a) does not apply to a municipality that has adopted the alternative accounting method provided for in Title 7, chapter 6, part 6.

History: En. Sec. 8, Ch. 121, L. 1931; re-en. Sec. 5083.8, R.C.M. 1935; amd. Sec. 2, Ch. 53, L. 1943; R.C.M. 1947, 11-1409(7); amd. Sec. 64, Ch. 430, L. 1995.

Compiler's Comments

1995 Amendment: Chapter 430 inserted (2)(b) providing exception for municipality that has adopted alternative accounting method provided in Title 7, chapter 6, part 6; and made minor changes in style. Amendment effective April 13, 1995.

7-6-4241. Clerk's report concerning expenditures, liabilities, and appropriations — exception. (1) The clerk shall submit to the council, on a date set by the council, a report showing the expenditures and liabilities against each separate budget appropriation incurred during the preceding calendar month and similar information for the whole of the fiscal year to the first day of the month in which the report is made, together with the unexpended balance of each appropriation. The clerk shall also set forth the receipts from taxes and in detail the receipts from all other sources by each fund for the same period.

(2) This section does not apply to a municipality that has adopted the alternative accounting method provided for in Title 7, chapter 6, part 6.

History: En. Sec. 9, Ch. 121, L. 1931; re-en. Sec. 5083.9, R.C.M. 1935; R.C.M. 1947, 11-1410; amd. Sec. 1, Ch. 581, L. 1985; amd. Sec. 65, Ch. 430, L. 1995.

Compiler's Comments

1995 Amendment: Chapter 430 inserted (2) providing exception from reporting requirement for municipality that has adopted alternative accounting method provided in Title 7, chapter 6, part 6; and made minor changes in style. Amendment effective April 13, 1995.

7-6-4242 through 7-6-4250 reserved.

7-6-4251. Procedure to make expenditures and incur liabilities in case of serious emergencies. Upon the happening of any emergency caused by fire, flood, explosion, storm, earthquake, epidemic, riot, or insurrection; for the immediate preservation of order or of public health; for the restoration of a condition of usefulness of any public property the usefulness of which has been destroyed by accident; for the relief of a stricken community overtaken by calamity; in settlement of approved claims for personal injuries or property damages, exclusive of claims arising from the operation of any public utility owned by the municipality; or to meet mandatory expenditures required by law, the council may, upon adoption by unanimous vote of all members present at any meeting (the time and place of which all members shall have had reasonable notice) of a resolution stating the facts constituting the emergency, an estimate of the amount required to be expended, and the fund against which emergency warrants are to be issued and upon entering the same upon their minutes, make the expenditures or incur the liabilities necessary to meet such emergency without further notice or hearing.

History: En. Sec. 8, Ch. 121, L. 1931; re-en. Sec. 5083.8, R.C.M. 1935; amd. Sec. 2, Ch. 53, L. 1943; R.C.M. 1947, 11-1409(4).

7-6-4252. Procedure to make expenditures and incur liabilities in case of other emergencies. (1) In a public emergency other than those described in 7-6-4251 and which could not reasonably have been foreseen at the time of making the budget, the council, by unanimous vote of the members present at any meeting (the time and place of which all of the members shall have had reasonable notice), shall adopt and enter upon their minutes a resolution stating the facts constituting the emergency, the estimated amount of money required to meet the emergency, and the fund against which emergency warrants shall be drawn.

(2) The council shall publish the resolution, together with a notice that a public hearing will be held on the resolution at the time and place designated in the notice, once in the official newspaper of the municipality and, if there is none, then in a newspaper of general circulation in the county in which the municipality is situated. The hearing may not be less than 1 week after the date of publication.

(3) Any taxpayer or resident of the municipality may appear at the hearing and be heard for or against the expenditure of money for the alleged emergency.

(4) (a) Upon the conclusion of the hearing, if the council approves the emergency expenditure, it shall make and enter upon its official minutes, by unanimous vote of all of the members of the council present at the meeting, an order setting forth the facts constituting the emergency, together with the amount of expenditure authorized therefor by them and the fund against which emergency warrants shall be drawn. Subject to the limitations of subsection (4)(b), the order is lawful authorization for them to expend such amount, but no more, for such purpose.

(b) No expenditure may be made or liability incurred pursuant to the order until 5 days, exclusive of the day of entry of the order, elapse.

History: **En. Sec. 8, Ch. 121, L. 1931; re-en. Sec. 5083.8, R.C.M. 1935; amd. Sec. 2, Ch. 53, L. 1943; R.C.M. 1947, 11-1409(part); amd. Sec. 32, Ch. 252, L. 1979.**

Cross-References

Notice by publication, 7-1-4127.

7-6-4253. Appeal of order for certain emergency expenditures. (1) During the 5-day period provided by 7-6-4252(4)(b), any taxpayer or resident of the municipality feeling aggrieved by the order issued pursuant to 7-6-4252(4) may appeal therefrom to the district court for the county in which the municipality is situated by filing with the clerk of the court a verified petition, a copy of which has theretofore been served upon the clerk of the municipality. The petition shall set forth in detail the objections of the petitioner to the order, giving reasons why the emergency does not exist.

(2) Until final determination of the matter by the court, the service and filing of the petition operates to suspend the emergency order and the authority to make any expenditure or incur any liability thereunder.

(3) Upon the filing of the petition, the court shall immediately fix a time for hearing the petition, which time shall be at the earliest convenient time. At the hearing the court shall hear the matter de novo and may take such testimony as it considers necessary. The court's proceedings shall be summary and informal, and its determination as to whether an emergency such as is contemplated within the meaning and provisions of this part exists or not and whether the expenditure authorized by the order is excessive or not is final.

History: **En. Sec. 8, Ch. 121, L. 1931; re-en. Sec. 5083.8, R.C.M. 1935; amd. Sec. 2, Ch. 53, L. 1943; R.C.M. 1947, 11-1409(part); amd. Sec. 33, Ch. 252, L. 1979.**

7-6-4254. Limitation on amount of emergency budgets and appropriations. (1) The total of all emergency budgets and appropriations made therein in any one year and to be paid from any city fund may not exceed 38% of the total amount which could be produced for such city fund by a maximum levy authorized by law to be made for such fund, as shown by the last completed assessment roll of the county.

(2) The term "taxable property", as used herein, means the percentage of the value at which such property is assessed and which percentage is used for the purposes of computing taxes and does not mean the assessed value of such property as the same appears on the assessment roll.

History: **En. Sec. 8, Ch. 121, L. 1931; re-en. Sec. 5083.8, R.C.M. 1935; amd. Sec. 2, Ch. 53, L. 1943; R.C.M. 1947, 11-1409(3); amd. Sec. 42, Ch. 614, L. 1981.**

7-6-4255. Use of emergency warrants. (1) All emergency expenditures must be made by the issuance of emergency warrants drawn against the fund or funds properly chargeable with the expenditures. The city treasurer is authorized and directed to pay the emergency warrants with any money in the fund or funds available for that purpose. If at any time there is insufficient money available in the fund or funds to pay the warrants, then the warrants must be registered, must bear interest, and must be called for payment in the manner provided by law for other city warrants.

(2) The clerk shall include in the annual tabulation to be submitted to the council the total amount of emergency warrants issued during the preceding fiscal year. Subject to the provisions of subsection (3), the council shall, in the

tax levies, include a levy for each fund sufficient to raise an amount equal to the total amount of any emergency warrants remaining unpaid at the close of the preceding fiscal year because of insufficient money in the fund to pay the warrants.

(3) (a) A levy may not be made for any fund in excess of the levy authorized by law to be made for the fund.

(b) The council may submit the question of funding the emergency warrants at an election as provided by law. If possible, the election must be held in conjunction with a regular or primary election. If at the election the issuing of funding bonds is authorized, it is not necessary for any levy to be made for the purpose of paying the emergency warrants.

History: En. Sec. 8, Ch. 121, L. 1931; re-en. Sec. 5083.8, R.C.M. 1935; amd. Sec. 2, Ch. 53, L. 1943; R.C.M. 1947, 11-1409(5), (6); amd. Sec. 28, Ch. 387, L. 1995.

Compiler's Comments

1995 Amendment: Chapter 387 in (3)(b) inserted second sentence that read: "If possible, the election must be held in conjunction with a regular or primary election"; and made minor changes in style.

Cross-References

Interest on warrants — decision of governing body, 17-5-102.

7-6-4256 through 7-6-4258 reserved.

7-6-4259. Budgets of appointed boards and commissions — exemption for bonds. (1) With respect to tax and fee money, the proposed budget of and the number of mills to be assessed by any board, commission, or other governing entity, except a board of trustees of a public library and an airport authority, appointed by a local government are subject to approval by that local government.

(2) If a board, commission, or other governing entity, other than a port authority created under Title 7, chapter 14, part 11, issues bonds and pledges to the payment of the bonds, taxes, revenue, or fees in accordance with the statutes authorizing the issuance of the bonds, the taxes, revenue, or fees and the levy or appropriation of the taxes, revenue, or fees are not subject to approval by the local government appointing the board, commission, or governing entity.

History: En. Sec. 1, Ch. 347, L. 1991; amd. Sec. 2, Ch. 169, L. 1993.

Part 43

Claims Against Municipalities

Part Cross-References

Interest on overdue accounts, Title 7, ch. 6, part 4.

7-6-4301. Presentation of claims against municipality. (1) All accounts and demands against a city or town must be presented to the council, duly itemized. These claims must be presented with all necessary and proper vouchers within 1 year from the date the same accrued. No action may be maintained against the city or town for or on account of any demand or claim against the city or town until such demand or claim has first been presented to the council.

(2) Payment of claims against a city or town may be authorized by the council when:

(a) payee-signed claims have been issued to the city or town and the payee has attested in the claim to its accuracy and that he has not received the claimed amount; or

(b) the payee has provided the city or town with an invoice or other document identifying the quantity and total cost per item included on the invoice.

(3) All bills, claims, accounts, or charges for materials of any kind that are purchased by and on behalf of a city or town by its department heads or officers must be reviewed by the city or town finance director or the city or town clerk before submission to the council.

(4) Any claim or demand not so presented within the time provided in subsection (1) is forever barred, and the council has no authority to allow any account or demand not so presented.

History: En. Sec. 4812, Pol. C. 1895; re-en. Sec. 2, Ch. 30, L. 1903; re-en. Sec. 3288, Rev. C. 1907; re-en. Sec. 5078, R.C.M. 1921; re-en. Sec. 5078, R.C.M. 1935; amd. Sec. 1, Ch. 55, L. 1957; amd. Sec. 25, Ch. 566, L. 1977; R.C.M. 1947, 11-1301(part); amd. Sec. 1, Ch. 176, L. 1985.

Cross-References

Tort claims against local governments, 2-9-301.

7-6-4302. Payment of claims by warrant or check. Except as provided in 7-6-4121, all accounts and demands against a city or town must be submitted to the council and, if found correct, must be allowed and an order must be made that the demand be paid. The demand must be paid in accordance with one of the following options:

(1) The mayor may draw a warrant upon the treasury in favor of the owner, specifying for what purpose and by what authority it is issued and out of what funds it is to be paid. The city treasurer or town clerk must pay the warrant out of the proper fund.

(2) The city treasurer or town clerk may pay the demand by check when there are sufficient city funds on deposit in an interest-bearing checking account in a bank within the city or town that are available to cover the check.

History: En. Sec. 1, Ch. 30, L. 1903; re-en. Sec. 3287, Rev. C. 1907; re-en. Sec. 5079, R.C.M. 1921; re-en. Sec. 5079, R.C.M. 1935; amd. Sec. 2, Ch. 100, L. 1973; R.C.M. 1947, 11-1302(part); amd. Sec. 34, Ch. 252, L. 1979; amd. Sec. 1, Ch. 261, L. 1985.

7-6-4303. Cancellation of municipal warrants and checks. (1) The city or town council may cancel municipal warrants and checks that have remained outstanding and unpaid for a period of 1 year or longer.

(2) The city or town clerk shall:

(a) enter on the record of warrants or checks, opposite the entry of each instrument, the date when it was canceled;

(b) make a list of the canceled instruments, specifying the number, date, and amount and the person to whom it was payable; and

(c) enter the list in the minutes of the city or town council proceedings.

History: En. Sec. 1, Ch. 17, L. 1987.

7-6-4304. Issuance of duplicate warrants and checks. (1) A duplicate warrant or check may be issued by the appropriate municipal officer whenever an instrument drawn by him upon the municipality is lost or destroyed. The duplicate warrant or check must be in the same form as the original except that it must have plainly printed across its face the word "duplicate". Except as provided in subsection (2), no duplicate warrant or check may be issued or delivered unless the person entitled to receive it deposits with the issuing municipal officer a bond in double the amount for which the duplicate warrant or check is issued, conditioned to hold the municipality and its officers harmless on account of the issuance of the duplicate warrant or check.

(2) No bond of indemnity is required when:

(a) the payee is the U.S. government, a state of the United States, an agency, instrumentality, or officer of the U.S. government or of a state, county, city, city and county, town, district, or other political subdivision of a state, or an officer thereof;

(b) the owner or custodian is the state of Montana or an agency or officer thereof;

(c) the owner or custodian is a bank, savings and loan association, admitted insurer, or trust company whose financial condition is regulated by the U.S. government or by the state of Montana;

(d) the amount of the lost or destroyed warrant or check is less than $100;

(e) it can be established that a crime has been committed and as a result of such crime the warrant or check was stolen or destroyed;

(f) it can be established that the warrant or check was mailed to an incorrect payee; or

(g) the payee is a vendor or contractor doing business with the municipality.

(3) Whenever the owner or custodian applies under the provisions of subsection (2)(e), (2)(f), or (2)(g), a stop-payment order must be placed on the original warrant or check by the municipality.

(4) Whenever the owner or custodian applies under the provisions of subsection (2)(c), (2)(d), (2)(e), (2)(f), or (2)(g), the application must include an agreement to indemnify and hold harmless the municipality or its officers and employees from any loss resulting from the issuance of a duplicate warrant or check. Any loss incurred in connection with the issuance of a duplicate warrant or check must be charged against the account from which the payment was derived.

History: En. Sec. 1, Ch. 167, L. 1987; amd. Sec. 6, Ch. 83, L. 1989.

7-6-4305 through 7-6-4310 reserved.

7-6-4311. Liability for false claims. (1) A person who knowingly presents or causes to be presented a false, fictitious, or fraudulent claim for allowance or payment to any city or town or its contractors forfeits the claim, including any portion that may be legitimate, and in addition is subject to a penalty of not to exceed $2,000 plus double the damages sustained by the city or town as a result of the false claim, including all legal costs.

(2) The forfeiture and the penalty may be claimed in the same suit.

History: En. Sec. 1, Ch. 366, L. 1989.

Part 44
Municipal Taxation

Part Cross-References

Resort community tax, 7-6-4462.

Actions arising from the seizure or sale of property for taxes, 27-2-210.

7-6-4401. General taxing power of municipalities. The city or town council has power to levy and collect taxes for general and special purposes on all property within the town or city subject to taxation under the laws of the state.

History: En. Subd. 2, Sec. 5039, R.C.M. 1921; amd. Sec. 1, Ch. 115, L. 1925; amd. Sec. 1, Ch. 20, L. 1927; re-en. Sec. 5039.1, R.C.M. 1935; R.C.M. 1947, 11-902.

7-6-4402. Tax-related duties of city treasurer. It is the duty of the city treasurer to perform such duties in the collection of taxes, license fees, or assessments as are prescribed by law or ordinance.

History: En. Sec. 4788, Pol. C. 1895; re-en. Sec. 3257, Rev. C. 1907; amd. Sec. 2, Ch. 88, L. 1913; re-en. Sec. 5034, R.C.M. 1921; Cal. Pol. C. Sec. 4392; amd. Sec. 3, Ch. 146, L. 1974; R.C.M. 1947, 11-807(part); amd. Sec. 35, Ch. 252, L. 1979.

7-6-4403. Tax-related duties of city clerk. It is the duty of the clerk to perform such duties in and about the assessment, levy, and collection of taxes and assessments as may be prescribed by law or ordinance.

History: En. Sec. 4784, Pol. C. 1895; re-en. Sec. 3253, Rev. C. 1907; re-en. Sec. 5033, R.C.M. 1921; Cal. Pol. C. Sec. 4393; re-en. Sec. 5033, R.C.M. 1935; R.C.M. 1947, 11-805(part).

7-6-4404. Tax-related duties of town clerk. It is the duty of the town clerk to perform such duties in the collection of taxes, license fees, or assessments as are prescribed by law or ordinance.

History: En. 11-805.1 by Sec. 4, Ch. 146, L. 1974; R.C.M. 1947, 11-805.1(part); amd. Sec. 36, Ch. 252, L. 1979.

7-6-4405. Limitation on tax levy for general municipal or administrative purposes. The amount of taxes to be levied for general municipal or administrative purposes in cities and towns may not exceed 2.4% of the taxable value of the property of the city or town subject to taxation.

History: En. Sec. 415, 5th Div. Comp. Stat. 1887; amd. Sec. 16, p. 185, L. 1889; amd. Sec. 4814, Pol. C. 1895; re-en. Sec. 3342, Rev. C. 1907; amd. Sec. 1, Ch. 103, L. 1911; amd. Sec. 1, Ch. 27, L. 1917; re-en. Sec. 5194, R.C.M. 1921; Cal. Pol. C. Sec. 4371; amd. Sec. 1, Ch. 156, L. 1923; amd. Sec. 1, Ch. 175, L. 1925; re-en. Sec. 5194, R.C.M. 1935; amd. Sec. 1, Ch. 48, L. 1937; amd. Sec. 4, Ch. 71, L. 1945; amd. Sec. 1, Ch. 192, L. 1951; amd. Sec. 1, Ch. 230, L. 1969; amd. Sec. 56, Ch. 566, L. 1977; R.C.M. 1947, 84-4701(part).

Cross-References

Section not applicable to self-governing local government units, 7-1-114.

7-6-4406. Authority to levy special taxes and assessments. The council may also assess and levy the special taxes or assessments provided for in this title.

History: En. Sec. 4815, Pol. C. 1895; re-en. Sec. 3343, Rev. C. 1907; re-en. Sec. 5200, R.C.M. 1921; re-en. Sec. 5200, R.C.M. 1935; R.C.M. 1947, 84-4712.

7-6-4407. Resolution to fix annual tax levy. (1) The council must:

(a) on or before the second Monday of August of each year, by resolution determine the amount of the city or town taxes for all purposes to be levied and assessed on the taxable property in the city or town for the current fiscal year; and

(b) on or before the fourth Monday of August of each year, by resolution determine the amount of school district taxes for all purposes to be levied and assessed on the taxable property in the city or town for the current fiscal year.

(2) (a) Except as provided in subsection (2)(b), the city or town clerk must at once certify to the county clerk a copy of the resolution, and the county treasurer must collect the taxes as provided in this part.

(b) In cities where the council has provided by ordinance for the collection of the taxes by the city treasurer, the city clerk must certify a copy of the resolution to the city treasurer.

History: En. Sec. 379, 5th Div. Comp. Stat. 1887; amd. Sec. 4872, Pol. C. 1895; amd. Sec. 1, p. 224, L. 1897; re-en. Sec. 3358, Rev. C. 1907; amd. Sec. 1, Ch. 1, L. 1919; amd. Sec. 1, Ch. 9, Ex. L. 1919; amd. Sec. 1, Ch. 165, L. 1921; re-en. Sec. 5216, R.C.M. 1921; amd. Sec. 1, Ch. 49, L. 1925; re-en. Sec. 5216, R.C.M. 1935; R.C.M. 1947, 84-4729; amd. Sec. 15, Ch. 133, L. 1993.

Cross-References

Use of resort community tax revenue to reduce property tax, 7-6-4467.

7-6-4408. Distribution of tax money. (1) The council or commission in each city or town may distribute the tax money collected for general municipal or administrative purposes into the funds prescribed by ordinance.

(2) This section does not apply to a city or town that has adopted the alternative accounting method provided for in Title 7, chapter 6, part 6.

History: En. Sec. 415, 5th Div. Comp. Stat. 1887; amd. Sec. 16, p. 185, L. 1889; amd. Sec. 4814, Pol. C. 1895; re-en. Sec. 3342, Rev. C. 1907; amd. Sec. 1, Ch. 103, L. 1911; amd. Sec. 1, Ch. 27, L. 1917; re-en. Sec. 5194, R.C.M. 1921; Cal. Pol. C. Sec. 4371; amd. Sec. 1, Ch. 156, L. 1923; amd. Sec. 1, Ch. 175, L. 1925; re-en. Sec. 5194, R.C.M. 1935; amd. Sec. 1, Ch. 48, L. 1937; amd. Sec. 4, Ch. 71, L. 1945; amd. Sec. 1, Ch. 192, L. 1951; amd. Sec. 1, Ch. 230, L. 1969; amd. Sec. 56, Ch. 566, L. 1977; R.C.M. 1947, 84-4701(part); amd. Sec. 66, Ch. 430, L. 1995.

Compiler's Comments

1995 Amendment: Chapter 430 inserted (2) providing exception for city or town that has adopted alternative accounting method provided in Title 7, chapter 6, part 6; and made minor changes in style. Amendment effective April 13, 1995.

7-6-4409. Determination of assessments. (1) The assessment made by the department of revenue for state and county purposes is the basis of taxation for cities and towns for the property situated in the city or town.

(2) It is the duty of the department, in making the property tax record, to separately and distinctly designate the real and personal property situated in cities and towns within each county in the state.

History: (1)En. Sec. 4862, Pol. C. 1895; re-en. Sec. 3348, Rev. C. 1907; re-en. Sec. 5205, R.C.M. 1921; re-en. Sec. 5205, R.C.M. 1935; amd. Sec. 92, Ch. 405, L. 1973; Sec. 84-4717, R.C.M. 1947; (2)En. Sec. 377, 5th Div. Comp. Stat. 1887; amd. Sec. 4863, Pol. C. 1895; re-en. Sec. 3349, Rev. C. 1907; re-en. Sec. 5206, R.C.M. 1921; re-en. Sec. 5206, R.C.M. 1935; amd. Sec. 93, Ch. 405, L. 1973; Sec. 84-4718, R.C.M. 1947; R.C.M. 1947, 84-4717, 84-4718; amd. Sec. 9, Ch. 27, Sp. L. November 1993.

7-6-4410. Property tax record to be furnished to certain municipalities. On or before the second Monday in July of each year, the department of revenue shall furnish a certified copy of the property tax record to all cities of the third class and towns within each county that make written request for the record on or before the first Monday in April of each year. The property tax record must pertain to property within the limits of the requesting cities and towns.

History: (1)En. Sec. 1, Ch. 69, L. 1911; re-en. Sec. 5207, R.C.M. 1921; re-en. Sec. 5207, R.C.M. 1935; amd. Sec. 94, Ch. 405, L. 1973; Sec. 84-4719, R.C.M. 1947; (2)En. Sec. 2, Ch. 69, L. 1911; re-en. Sec. 5208, R.C.M. 1921; re-en. Sec. 5208, R.C.M. 1935; amd. Sec. 95, Ch. 405, L. 1973; Sec. 84-4720, R.C.M. 1947; R.C.M. 1947, 84-4719, 84-4720; amd. Sec. 10, Ch. 27, Sp. L. November 1993.

Cross-References

Classification of municipalities, 7-1-4111.

7-6-4411. Equalization of assessments. (1) The equalization of assessments of property made by the department of revenue applies to the assessment of property in any city or town and must be taken as the equalization thereof.

(2) The person aggrieved must first make an affidavit stating the facts, which must be filed with the clerk.

History: (1)En. Sec. 4865, Pol. C. 1895; re-en. Sec. 3351, Rev. C. 1907; re-en. Sec. 5209, R.C.M. 1921; re-en. Sec. 5209, R.C.M. 1935; amd. Sec. 96, Ch. 405, L. 1973; Sec. 84-4721, R.C.M. 1947; (2)En. Sec. 4866, Pol. C. 1895; re-en. Sec. 3352, Rev. C. 1907; re-en. Sec. 5210, R.C.M. 1921; re-en. Sec. 5210, R.C.M. 1935; R.C.M. 1947, 84-4721, 84-4722.

Cross-References

Equalization, Title 15, ch. 9.

7-6-4412. Preparation of municipal property tax record. (1) The county clerk, on or before the first Monday in October in each year, shall provide a copy of the property tax record to each city in the county if the city treasurer is required by an ordinance of the city to collect its taxes. The record must be a copy of the corrected property tax record of the county, as far as it refers to city property.

(2) The copy must be in a form that itemizes the different funds so that the city treasurer may extend the funds and collect the taxes.

History: (1)En. Sec. 4867, Pol. C. 1895; amd. Sec. 1, p. 223, L. 1897; re-en. Sec. 3353, Rev. C. 1907; re-en. Sec. 5211, R.C.M. 1921; re-en. Sec. 5211, R.C.M. 1935; Sec. 84-4723, R.C.M. 1947; (2)En. Sec. 4868, Pol. C. 1895; amd. Sec. 1, p. 223, L. 1897; re-en. Sec. 3354, Rev. C. 1907; re-en. Sec. 5212, R.C.M. 1921; re-en. Sec. 5212, R.C.M. 1935; Sec. 84-4724, R.C.M. 1947; (3)En. Sec. 4869, Pol. C. 1895; amd. Sec. 1, p. 224, L. 1897; re-en. Sec. 3355, Rev. C. 1907; re-en. Sec. 5213, R.C.M. 1921; re-en. Sec. 5213, R.C.M. 1935; Sec. 84-4725, R.C.M. 1947; R.C.M. 1947, 84-4723, 84-4724, 84-4725; amd. Sec. 11, Ch. 27, Sp. L. November 1993.

7-6-4413. Collection of taxes. (1) Except in the case of cities of the first, second, and third classes that provide by ordinance for the city treasurer to collect the taxes from the corrected property tax record, the county treasurer of each county shall collect the tax levied by all cities and towns in the respective county.

(2) The county treasurer shall collect the city or town taxes, including unpaid road poll taxes, at the same time as the state and county taxes and with the same penalties and interest in case of delinquency.

History: En. Sec. 4870, Pol. C. 1895; amd. Sec. 1, Ch. 24, L. 1907; re-en. Sec. 3356, Rev. C. 1907; re-en. Sec. 5214, R.C.M. 1921; re-en. Sec. 5214, R.C.M. 1935; R.C.M. 1947, 84-4726(part); amd. Sec. 12, Ch. 27, Sp. L. November 1993.

Cross-References

Classification of cities, 7-1-4111.

7-6-4414. Sales for delinquent taxes when county collects municipal tax. (1) All publications of sales for delinquent taxes shall include city or town taxes. There is only one sale for each piece of property. The sale shall cover the aggregate of city or town, county, and state taxes, with the penalties, interest, and cost of advertising provided by law.

(2) All money received from sales, after a deed is given by the county treasurer as provided by law, shall be credited to the state, county, and city or town pro rata in the same proportions as provided in 15-17-322.

History: En. Sec. 4870, Pol. C. 1895; amd. Sec. 1, Ch. 24, L. 1907; re-en. Sec. 3356, Rev. C. 1907; re-en. Sec. 5214, R.C.M. 1921; re-en. Sec. 5214, R.C.M. 1935; R.C.M. 1947, 84-4726(part); amd. Sec. 37, Ch. 252, L. 1979; amd. Sec. 27, Ch. 587, L. 1987.

Cross-References

Tax sales, Title 15, ch. 17.

Actions arising from the seizure or sale of property for taxes, 27-2-210.

7-6-4415 through 7-6-4420 reserved.

7-6-4421. Authorization for tax levy and collection by municipality. (1) The council has power to annually levy and collect taxes on all the property in the city or town taxable for state and county purposes and may by ordinance provide for the levy and collection of the same.

(2) Until the passage of such ordinance, the levy and collection of municipal taxes are and the proceedings for such purposes must be as provided in this part.

History: (1)En. Sec. 4860, Pol. C. 1895; re-en. Sec. 3346, Rev. C. 1907; re-en. Sec. 5203, R.C.M. 1921; re-en. Sec. 5203, R.C.M. 1935; amd. Sec. 90, Ch. 405, L. 1973; Sec. 84-4715, R.C.M. 1947; (2)En. Sec. 4861, Pol. C. 1895; re-en. Sec. 3347, Rev. C. 1907; re-en. Sec. 5204, R.C.M. 1921; re-en. Sec. 5204, R.C.M. 1935; amd. Sec. 91, Ch. 405, L. 1973; Sec. 84-4716, R.C.M. 1947; R.C.M. 1947, 84-4715, 84-4716.

7-6-4422. Authorization for collection of delinquent taxes by municipalities. (1) All cities in Montana which by ordinance provide for the collection of city taxes and assessments are hereby authorized and empowered to solicit payment, ask for, receive, and receipt for delinquent taxes and assessments due any such city.

(2) Upon receipt of payment for delinquent taxes and assessments by the city treasurer of such city, it shall be the duty of such city treasurer to immediately certify to the county treasurer of the county in which such city is situated:

(a) the fact of such payment with the amount thereof;

(b) a description of the property charged with such delinquent taxes or assessments so paid; and

(c) the name of the person to whom the same were assessed.

(3) Nothing in this section is intended to or shall prevent the county treasurer of the county in which such city is situated from collecting such delinquent taxes or assessments, but this section is intended as an aid to the collector of such delinquent taxes and assessments.

History: En. Sec. 1, Ch. 145, L. 1933; re-en. Sec. 5215.2, R.C.M. 1935; R.C.M. 1947, 84-4728.

7-6-4423. Sales for delinquent taxes when municipality collects municipal tax. (1) (a) In a city or town that collects its own taxes or special assessments when any taxes or assessments become delinquent, a tax sale may not be held by the city or town unless the city treasurer or town clerk, within 10 working days after the date on which the taxes or assessments become delinquent, certifies the delinquent taxes and assessments to the county treasurer of the county in which the city or town is situated.

(b) The certificate must contain:

(i) the description of each lot or parcel of land on which any tax or assessment has become delinquent;

(ii) the name and address of the person taxed or assessed;

(iii) the date when the tax or assessment became delinquent;

(iv) the amount of the delinquent tax or assessment, and the penalty to be added, if any.

(c) If any special assessment is payable in installments and any installment becomes delinquent, the amount of the delinquent installment must be included in the certificate. If the city or town council, by the adoption of an appropriate resolution, declares the total assessment remaining unpaid to be delinquent, as provided in 7-12-4182, then that total must be included in the certificate.

(2) Upon receipt of the certificate, the county treasurer shall enter the delinquent taxes and assessments in the delinquent tax list of the county, and the county treasurer in selling property for delinquent taxes shall include all city and town delinquent taxes and assessments. There may be only one sale for each piece of property. The sale must cover the aggregate of the city, town, county, and state taxes and special assessments, including penalties, interest, and costs provided by law.

History: En. Sec. 1, Ch. 148, L. 1927; re-en. Sec. 5215.1, R.C.M. 1935; R.C.M. 1947, 84-4727; amd. Sec. 12, Ch. 370, L. 1987; amd. Sec. 1, Ch. 105, L. 1995.

Compiler's Comments

1995 Amendment: Chapter 105 at beginning of (1)(a), after "town", deleted "whose city treasurer or town clerk", after "held" substituted "by the city or town unless the" for "therefor by such city treasurer or town clerk but such", and before "days" inserted "working"; at end of (1)(b)(iv), after "added", substituted "if any" for "and the total amount of such delinquent tax or assessment with penalty added"; and near end of (1)(c), before "be included", substituted "that total must" for "the whole of the assessment remaining unpaid shall"; and made minor changes in style.

Cross-References

Tax sales, Title 15, ch. 9.

Actions arising from the seizure or sale of property for taxes, 27-2-210.

7-6-4424 through 7-6-4430 reserved.

7-6-4431. Authorization to exceed maximum mill levy — election required. The governing body of a municipality may raise money by taxation for the support of municipal government services, facilities, or other capital projects in excess of the levy or levies allowed by law under the following conditions:

(1) The governing body must pass a resolution indicating its intent to exceed the current statutory mill levy on the approval of a majority of the qualified electors voting in an election under subsection (2). The resolution must include:

(a) the specific purpose for which the additional money will be used;

(b) the specific dollar amount to be raised;

(c) the approximate number of mills required; and

(d) the specific mill levy limitation to be exceeded.

(2) The governing body must submit the question of the additional mill levy to the qualified electors of the municipality at the next regular primary or

general election on either odd-numbered or even-numbered years. The question may not be submitted more than once in any calendar year. If the majority voting on the question are in favor of the additional levy or levies, the governing body is authorized to exceed the statutory mill levy limit in the amount specified in the resolution for a period not to exceed 2 years.

History: Ap. p. Sec. 1, Ch. 12, L. 1919; re-en. Sec. 5195, R.C.M. 1921; re-en. Sec. 5195, R.C.M. 1935; Sec. 84-4706, R.C.M. 1947; Ap. p. Sec. 4, Ch. 12, L. 1919; re-en. Sec. 5198, R.C.M. 1921; re-en. Sec. 5198, R.C.M. 1935; Sec. 84-4709, R.C.M. 1947; R.C.M. 1947, 84-4706, 84-4709(part); amd. Sec. 38, Ch. 252, L. 1979; amd. Sec. 1, Ch. 614, L. 1979.

Cross-References

Date of primary elections, 13-1-107.

7-6-4432. Purpose of additional mill levy to be stated. The submission of the question shall expressly state the purpose for which the additional levy is to be made.

History: En. Sec. 3, Ch. 12, L. 1919; re-en. Sec. 5197, R.C.M. 1921; re-en. Sec. 5197, R.C.M. 1935; R.C.M. 1947, 84-4708(part); amd. Sec. 2, Ch. 614, L. 1979.

7-6-4433. Repealed. Sec. 42, Ch. 252, L. 1979; Sec. 407, Ch. 571, L. 1979; Sec. 8, Ch. 614, L. 1979.

History: En. Sec. 5, Ch. 12, L. 1919; re-en. Sec. 5199, R.C.M. 1921; re-en. Sec. 5199, R.C.M. 1935; R.C.M. 1947, 84-4710.

7-6-4434. Notice of election on question of additional mill levy. Where the question of making an additional levy is submitted to the qualified electors, notice shall be given as provided for in 13-1-108.

History: En. Sec. 2, Ch. 12, L. 1919; re-en. Sec. 5196, R.C.M. 1921; re-en. Sec. 5196, R.C.M. 1935; R.C.M. 1947, 84-4707; amd. Sec. 305, Ch. 571, L. 1979; amd. Sec. 3, Ch. 614, L. 1979.

7-6-4435. Repealed. Sec. 407, Ch. 571, L. 1979.

History: En. Sec. 4, Ch. 12, L. 1919; re-en. Sec. 5198, R.C.M. 1921; re-en. Sec. 5198, R.C.M. 1935; R.C.M. 1947, 84-4709(part).

7-6-4436. Conduct of election. The election will be conducted as provided by Title 13.

History: En. Sec. 4, Ch. 12, L. 1919; re-en. Sec. 5198, R.C.M. 1921; re-en. Sec. 5198, R.C.M. 1935; R.C.M. 1947, 84-4709(part); amd. Sec. 306, Ch. 571, L. 1979; amd. Sec. 5, Ch. 614, L. 1979.

7-6-4437. Use of proceeds from additional mill levy. (1) Except as provided in subsection (2), if authorized, the money raised by the additional levy shall be used only for that specific purpose provided for in 7-6-4432.

(2) If any balance remains on hand after the purpose for which the levy was made has been accomplished, the balance may by vote of the governing body be transferred to any other fund of the municipality.

History: En. Sec. 3, Ch. 12, L. 1919; re-en. Sec. 5197, R.C.M. 1921; re-en. Sec. 5197, R.C.M. 1935; R.C.M. 1947, 84-4708(part); amd. Sec. 6, Ch. 614, L. 1979.

7-6-4438. Tax levy and expenditures for municipal and administrative purposes when limits on municipal indebtedness exceeded. (1) All taxes levied and collected for municipal and administrative purposes by any city or town in which the indebtedness equals or exceeds the limit allowed by statute may be used in payment of current expenses during the fiscal year for which the taxes were levied, as if a special levy had been made for each of the purposes. The council of any such city or town may designate the amount of the general levy applicable to each of the purposes. The amount so designated constitutes a special fund for the special purpose of paying the expenses incurred for the purpose. The expenses shall be payable out of the fund and not otherwise.

(2) However, the aggregate of all taxes authorized for general municipal and administrative purposes may not exceed 1.5% annually of the taxable value of all property subject to taxation in the city or town.

(3) Any city, the indebtedness of which equals or exceeds the limit allowed by statute, may levy and collect special taxes for municipal and administrative purposes, and the city council in making special levies shall designate the amount thereof for each of the purposes, and each tax, when collected, constitutes a fund out of which the expenses incurred for the purpose for which the tax was levied shall be paid. The expenses incurred for any particular purpose shall be paid out of the fund provided therefor and not otherwise.

History: (1), (2)En. Sec. 1, Ch. 21, L. 1903; amd. Sec. 1, Ch. 106, L. 1907; Sec. 3344, Rev. C. 1907; re-en. Sec. 5201, R.C.M. 1921; amd. Sec. 2, Ch. 175, L. 1925; re-en. Sec. 5201, R.C.M. 1935; amd. Sec. 53, Ch. 100, L. 1973; amd. Sec. 89, Ch. 405, L. 1973; amd. Sec. 58, Ch. 566, L. 1977; Sec. 84-4713, R.C.M. 1947; (3)En. Sec. 2, Ch. 21, L. 1903; re-en. Sec. 3345, Rev. C. 1907; re-en. Sec. 5202, R.C.M. 1921; re-en. Sec. 5202, R.C.M. 1935; Sec. 84-4714, R.C.M. 1947; R.C.M. 1947, 84-4713, 84-4714; amd. Sec. 39, Ch. 252, L. 1979.

7-6-4439. Emergency provisions not affected. Nothing in 7-6-4431, 7-6-4432, 7-6-4434, 7-6-4436, and 7-6-4437 shall affect the emergency expenditures provided by law.

History: En. Sec. 7, Ch. 614, L. 1979; amd. Sec. 13, Ch. 370, L. 1987.

Cross-References

Emergency provisions, 7-6-4251 through 7-6-4255.

7-6-4440 through 7-6-4450 reserved.

7-6-4451. All-purpose mill levy authorized. It is the purpose of 7-6-4451 through 7-6-4455 to authorize and empower the cities and towns of Montana, at their option, to make an all-purpose annual mill levy in lieu of the multiple levies now authorized by the statutes of Montana.

History: En. Sec. 1, Ch. 82, L. 1965; amd. Sec. 1, Ch. 226, L. 1969; amd. Sec. 1, Ch. 375, L. 1971; R.C.M. 1947, 84-4701.1(part).

Cross-References

Use of resort community tax revenue to reduce property tax, 7-6-4467.

7-6-4452. Maximum all-purpose mill levy. Except as provided elsewhere, the cities and towns of the state of Montana may make an all-purpose annual levy upon the taxable value of all the property in the cities and towns subject to taxation for municipal purposes in lieu of the multiple levies now authorized by statute. The total of the all-purpose levy may not exceed 65 mills on the dollar.

History: En. Sec. 2, Ch. 82, L. 1965; amd. Sec. 2, Ch. 226, L. 1969; amd. Sec. 2, Ch. 226, L. 1969; amd. Sec. 2, Ch. 375, L. 1971; amd. Sec. 57, Ch. 566, L. 1977; R.C.M. 1947, 84-4701.2(part).

7-6-4453. Certain special mill levies also available. (1) The all-purpose mill levy shall not and may not include the levies imposed for bonded indebtedness, to pay judgments or tax protest refunds, or for special improvement district revolving funds of municipalities, which levies may be made in addition to the all-purpose levy, as provided in subsection (2). Sections 7-6-4451 through 7-6-4455 shall not be construed as repealing those statutes providing for multiple separate levies.

(2) Extraordinary levies otherwise authorized to pay for bonded indebtedness, judgments, tax protest refunds, or special improvement district revolving funds may be made by such municipalities in addition to such all-purpose levy provided for in 7-6-4451 through 7-6-4455.

(3) In a third-class city or town, the all-purpose mill levy may not include the special tax levy for the firefighters' disability and pension fund provided for in 19-18-503. This special tax levy must be made in addition to the all-purpose mill levy.

History: Ap. p. Sec. 1, Ch. 82, L. 1965; amd. Sec. 1, Ch. 226, L. 1969; amd. Sec. 1, Ch. 375, L. 1971; Sec. 84-4701.1, R.C.M. 1947; Ap. p. 84-4701.6 by Sec. 1, Ch. 145, L. 1967; amd. Sec. 5, Ch. 375, L. 1971; Sec. 84-4701.6, R.C.M. 1947; Ap. p. Sec. 2, Ch. 82, L. 1965; amd. Sec. 2, Ch. 226, L. 1969; amd. Sec. 2, Ch. 375, L. 1971; amd. Sec. 57, Ch. 566, L. 1977; Sec. 84-4701.2, R.C.M. 1947; R.C.M. 1947, 84-4701.1(part), 84-4701.2(part), 84-4701.6; amd. Sec. 1, Ch. 372, L. 1983; amd. Sec. 2, Ch. 26, Sp. L. June 1986.

Cross-References

"Drake Amendment" — state mandated duties require funding, 1-2-112.

Payment of judgments, 2-9-316.

Special improvement district revolving funds, 7-12-4221 through 7-12-4229.

Tax protest refunds, 15-1-402.

7-6-4454. Certification of all-purpose levy to county officers. In the event that it is necessary to certify such a municipal levy to county officers for collection, the same shall be certified as an all-purpose levy.

History: En. Sec. 5, Ch. 82, L. 1965; amd. Sec. 4, Ch. 375, L. 1971; R.C.M. 1947, 84-4701.5.

7-6-4455. Changes from all-purpose levy method. Any municipality electing to follow the all-purpose levy method provided for in 7-6-4452 shall be bound by that election during the ensuing fiscal year but may abandon such method in succeeding fiscal years.

History: En. Sec. 4, Ch. 82, L. 1965; R.C.M. 1947, 84-4701.4.

7-6-4456 through 7-6-4460 reserved.

7-6-4461. Resort tax — definitions. As used in 7-6-4461 through 7-6-4469, the following definitions apply:

(1) "Luxuries" means any gift item, luxury item, or other item normally sold to the public or to transient visitors or tourists. The term does not include food purchased unprepared or unserved, medicine, medical supplies and services, appliances, hardware supplies and tools, or any necessities of life.

(2) "Medical supplies" means items that are sold to be used for curative, prosthetic, or medical maintenance purposes, whether or not prescribed by a physician.

(3) "Medicine" means substances sold for curative or remedial properties, including both physician prescribed and over-the-counter medications.

(4) "Resort area" means an area that:

(a) is an unincorporated area and is a defined contiguous geographic area;

(b) has a population of less than 2,500 according to the most recent federal census or federal estimate;

(c) derives the major portion of its economic well-being from businesses catering to the recreational and personal needs of persons traveling to or through the area for purposes not related to their income production; and

(d) has been designated by the department of commerce as a resort area prior to its establishment by the county commissioners as provided in 7-6-4468.

(5) "Resort community" means a community that:

(a) is an incorporated municipality;

(b) has a population of less than 5,500 according to the most recent federal census or federal estimate;

(c) derives the primary portion of its economic well-being related to current employment from businesses catering to the recreational and personal needs of persons traveling to or through the municipality for purposes not related to their income production; and

(d) has been designated by the department of commerce as a resort community.

History: En. Sec. 1, Ch. 729, L. 1985; amd. Sec. 1, Ch. 549, L. 1991; amd. Sec. 1, Ch. 554, L. 1995.

Compiler's Comments

1995 Amendment: Chapter 554 in (5)(b) substituted "5,500" for "2,500"; and in (5)(c) substituted "primary" for "major" and inserted "related to current employment". Amendment effective April 26, 1995.

7-6-4462. Resort community taxing authority — specific delegation. As required by 7-1-112, 7-6-4461 through 7-6-4467 specifically delegate to the electors of each respective resort community the power to authorize their municipality to impose a resort tax within the corporate boundary of the municipality as provided in 7-6-4461 through 7-6-4467.

History: En. Sec. 2, Ch. 729, L. 1985.

7-6-4463. Limit on resort tax rate — goods and services subject to tax. (1) The rate of the resort tax must be established by the election petition or resolution provided for in 7-6-4464, but the rate may not exceed 3%.

(2) (a) The resort tax is a tax on the retail value of all goods and services sold, except for goods and services sold for resale, within the resort community or area by the following establishments:

(i) hotels, motels, and other lodging or camping facilities;

(ii) restaurants, fast food stores, and other food service establishments;

(iii) taverns, bars, night clubs, lounges, and other public establishments that serve beer, wine, liquor, or other alcoholic beverages by the drink; and

(iv) destination ski resorts and other destination recreational facilities.

(b) Establishments that sell luxuries shall collect a tax on such luxuries.

History: En. Sec. 3, Ch. 729, L. 1985; amd. Sec. 14, Ch. 370, L. 1987; amd. Sec. 3, Ch. 549, L. 1991; amd. Sec. 2, Ch. 554, L. 1995.

Compiler's Comments

1995 Amendment: Chapter 554 in (2)(a) inserted exception clause; and made minor changes in style. Amendment effective April 26, 1995.

7-6-4464. Resort tax — election required — procedure — notice. (1) A resort community or area may not impose or, except as provided in 7-6-4465, amend or repeal a resort tax unless the resort tax question has been submitted to the electorate of the resort community or area and approved by a majority of the electors voting on the question.

(2) The resort tax question may be presented to the electors of:

(a) a resort community by a petition of the electors as provided by 7-1-4130, 7-5-132, and 7-5-134 through 7-5-137 or by a resolution of the governing body of the resort community; or

(b) a resort area by a resolution of the board of county commissioners, following receipt of a petition of electors as provided in 7-6-4468.

(3) If a resort area is in more than one county, the resort tax question must be presented to and approved by the electors in the resort area of each county.

(4) The petition or resolution referring the taxing question must state:

(a) the rate of the resort tax;

(b) the duration of the resort tax;

(c) the date when the tax becomes effective, which date may not be earlier than 35 days after the election; and

(d) the purposes that may be funded by the resort tax revenue.

(5) Upon receipt of an adequate petition, the governing body may:

(a) call a special election on the resort tax question; or

(b) have the resort tax question placed on the ballot at the next regularly scheduled election.

(6) (a) Before the resort tax question is submitted to the electorate of a resort community or area, the governing body of the resort community or the board of county commissioners in the county in which the resort area is located shall publish notice of the goods and services subject to the resort tax, in a newspaper that meets the qualifications of subsection (6)(b). The notice must be published twice, with at least 6 days separating publications. The first publication must be no more than 30 days prior to the election and the last no less than 3 days prior to the election.

(b) The newspaper must be:

(i) of general, paid circulation with a second-class mailing permit;

(ii) published at least once a week; and

(iii) published in the county where the election will take place.

(7) The question of the imposition of a resort tax may not be placed before the electors more than once in any fiscal year.

History: En. Sec. 4, Ch. 729, L. 1985; amd. Sec. 4, Ch. 549, L. 1991; amd. Sec. 3, Ch. 554, L. 1995.

Compiler's Comments

1995 Amendment: Chapter 554 inserted (6) regarding publication of notice; and made minor changes in style. Amendment effective April 26, 1995.

7-6-4465. Resort tax administration. (1) In this section, "governing body" means the governing body of a resort community or, if the resort tax has been approved by the electors of a resort area, the board of county commissioners.

(2) Not less than 30 days prior to the date the resort tax becomes effective, the governing body shall enact an administrative ordinance governing the collection and reporting of the resort taxes. This administrative ordinance may be amended at any time as may be necessary to effectively administer the resort tax.

(3) The administrative ordinance must specify:

(a) the times taxes collected by businesses are to be remitted to the governing body;

(b) the office, officer, or employee of the governing body responsible for receiving and accounting for the resort tax receipts;

(c) the office, officer, or employee of the governing body responsible for enforcing the collection of resort taxes and the methods and procedures to be used in enforcing the collection of resort taxes due; and

(d) the penalties for failure to report taxes due, failure to remit taxes due, and violations of the administrative ordinance. The penalties may include:

(i) criminal penalties not to exceed a fine of $1,000 or 6 months' imprisonment, or both;

(ii) civil penalties if the governing body prevails in a suit for the collection of resort taxes, not to exceed 50% of the resort taxes found due plus the costs and attorney fees incurred by the governing body in the action;

(iii) revocation of a county or municipal business license held by the offender; and

(iv) any other penalties that may be applicable for violation of an ordinance.

(4) The administrative ordinance may include:

(a) further clarification and specificity in the categories of goods and services that are subject to the resort tax consistent with 7-6-4463;

(b) authorization for business administration and prepayment discounts. The discount authorization may allow each vendor and commercial establishment to:

(i) withhold up to 5% of the resort taxes collected to defray their costs for the administration of the tax collection; or

(ii) receive a refund of up to 5% of the resort tax payment received from them by the governing body 10 days prior to the collection due date established by the administrative ordinance; and

(c) other administrative details necessary for the efficient and effective administration of the tax.

History: En. Sec. 5, Ch. 729, L. 1985; amd. Sec. 5, Ch. 549, L. 1991.

7-6-4466. Use of resort community tax revenues — bond issue — pledge. (1) Unless otherwise restricted by the voter-approved tax authorization provided for in 7-6-4464, a resort community may appropriate and expend revenues derived from a resort tax for any activity, undertaking, or administrative service that the municipality is authorized by law to perform, including costs resulting from the imposition of the tax.

(2) A resort community may issue bonds to provide, install, or construct any of the public facilities, improvements, or undertakings authorized under 7-7-4101, 7-7-4404, and 7-12-4102. Bonds issued under this section must be authorized by a resolution of the governing body, stating the terms, conditions, and covenants of the municipality as the governing body considers appropriate. The bonds may be sold at a discount at a public or private sale.

(3) A resort community may pledge for repayment of bonds issued under this section the revenues derived from a resort tax, special assessments levied for and revenues collected from the facilities, improvements, or undertakings for which the bonds are issued, and any other source of revenue authorized by the legislature to be imposed or collected by the resort community. Such bonds do not constitute debt for purposes of any statutory debt limitation, provided that in the resolution authorizing the issuance of the bonds the municipality

determines that the resort tax revenues, special assessments levied for and revenues from such facilities, improvements or undertakings, or other sources of revenue, if any, pledged to the payment of the bonds will be sufficient in each year to pay the principal thereof and interest thereon when due. Bonds may not be issued pledging proceeds of the resort tax for repayment unless the municipality in the resolution authorizing issuance of the bonds determines that in any fiscal year the annual revenues expected to be derived from the resort tax, less the amount required to reduce property taxes pursuant to 7-6-4467, equals at least 125% of the average amount of the principal and interest payable from the resort tax revenues on the bonds and any other outstanding bonds payable from the resort tax except any bonds to be refunded upon the issuance of the proposed bonds.

History: **En. Sec. 6, Ch. 729, L. 1985; amd. Sec. 1, Ch. 40, L. 1987.**

Cross-References

Limitation on indebtedness, Art. VIII, sec. 10, Mont. Const.; 7-7-2101, 7-14-2524.

7-6-4467. Resort community tax — property tax relief. (1) Annually anticipated receipts from the resort tax must be applied to reduce the municipal property tax levy for the fiscal year in an amount equal to at least 5% of the resort tax revenues derived during the preceding fiscal year.

(2) A resort community that received more resort tax revenues than had been included in the annual municipal budget shall establish a municipal property tax relief fund. All resort tax revenues received in excess of the budget amount must be placed in the fund. The entire fund must be used to replace municipal property taxes in the ensuing fiscal year.

History: **En. Sec. 7, Ch. 729, L. 1985.**

7-6-4468. Establishment of a resort area — taxing authority — approval by electorate. (1) The establishment of a resort area for the purpose of imposing a resort tax may be initiated by a written petition to the board of county commissioners of the county in which the area is located. The petition must contain a description of the proposed resort area and must be signed by at least 15% of the electors residing in the proposed area.

(2) The petition must include a proposal to impose a resort tax within the proposed resort area, including the rate, duration, effective date, and purpose of the tax as provided in 7-6-4464.

(3) Upon receiving a petition to establish a resort area, the board of county commissioners shall present the question to the electors residing in the proposed resort area as provided in 7-6-4464.

History: **En. Sec. 2, Ch. 549, L. 1991.**

7-6-4469. Use of resort area tax. (1) Unless otherwise provided by the resolution approved by the electors under 7-6-4464, the board of county commissioners shall appropriate and spend revenue derived from a resort area tax for the purpose stated in the resolution.

(2) The resort area shall reimburse the board of county commissioners for costs associated with the collection, administration, and litigation of the resort area tax.

History: **En. Sec. 6, Ch. 549, L. 1991.**

Part 45
Municipal Warrants

7-6-4501. Interest on unpaid warrants. (1) When any warrant drawn upon the treasury of a city or town and pursuant to any ordinance or resolution or direction of the council of the city or town is presented to the city treasurer or town clerk for payment and the same is not paid for want of funds, the city treasurer or town clerk must endorse thereon "Not paid for want of funds", annexing the date of presentation, and signing his name thereto.

(2) From the time of the endorsement until the warrant is called for payment, the warrant bears interest at a rate fixed by ordinance, or if the warrant is subject to purchase for investment by a county as provided in 7-6-2701 and is held by a county, the warrant bears interest at a rate fixed by the board of county commissioners under 7-6-2701.

History: En. Sec. 1, p. 75, L. 1897; re-en. Sec. 3284, Rev. C. 1907; re-en. Sec. 5081, R.C.M. 1921; re-en. Sec. 5081, R.C.M. 1935; amd. Sec. 12, Ch. 234, L. 1971; R.C.M. 1947, 11-1307; amd. Sec. 40, Ch. 252, L. 1979; amd. Sec. 2, Ch. 92, L. 1985.

7-6-4502. Call for payment of warrants drawing interest. (1) Except as provided in subsection (2), when there is money in the city or town treasury applicable to the payment of any warrants drawing interest and sufficient to pay the same, the city treasurer or town clerk must:

(a) give notice in some newspaper published in such city or town or, if none is published therein, then by written notice posted in a conspicuous place on the outer door of the office of the city treasurer or town clerk, stating that he is ready to pay the warrants and giving the number of the warrants to be paid; and

(b) if the warrants are subject to purchase by the county for investment as provided in 7-6-2701, notify the county treasurer that any such warrants in the possession of the county will be paid upon presentation to the city treasurer or town clerk.

(2) If all of such warrants are held by a county, only the notice provided for in subsection (1)(b) is required.

(3) The warrants so called cease to draw interest from the time of the first publication or posting of such notice unless all of such warrants are held by a county, in which case the warrants cease to draw interest from the time of notification of the county treasurer.

History: En. Sec. 2, p. 75, L. 1897; re-en. Sec. 3285, Rev. C. 1907; re-en. Sec. 5082, R.C.M. 1921; re-en. Sec. 5082, R.C.M. 1935; R.C.M. 1947, 11-1308; amd. Sec. 3, Ch. 92, L. 1985.

7-6-4503. Registration of warrants. Upon the presentation of any warrant endorsed as specified in 7-6-4501, it shall be the duty of the city treasurer or town clerk to record, in a book to be provided for that purpose, the warrant, the date of such presentation, the number and date of the warrant, to whom payable, the fund on which drawn, and the amount thereof.

History: En. Sec. 3, p. 76, L. 1897; re-en. Sec. 3286, Rev. C. 1907; re-en. Sec. 5083, R.C.M. 1921; re-en. Sec. 5083, R.C.M. 1935; R.C.M. 1947, 11-1309(part).

7-6-4504. Order of redemption of warrants. All warrants to be redeemed as provided for in 7-6-4502 shall be redeemed in the order of their registration, beginning with the date of the warrant first so registered.

History: **En. Sec. 3, p. 76, L. 1897; re-en. Sec. 3286, Rev. C. 1907; re-en. Sec. 5083, R.C.M. 1921; re-en. Sec. 5083, R.C.M. 1935; R.C.M. 1947, 11-1309(part).**

Part 46

Deposit and Investment of Municipal Money

Part Cross-References

Deposit and investment of public money, Title 7, ch. 6, part 2.

State unified investment fund, Title 17, ch. 6, part 2.

Montana Health Facility Authority bonds — legal investment, 90-7-113.

7-6-4601. Deposit of public money. It shall be the duty of the city treasurer or town clerk, whichever is appropriate, to deposit all public money in his possession and under his control, except such as may be required for current business, in any solvent bank or banks located in such city or town and subject to national supervision or state examination, as the council shall designate, and no other.

History: **Ap. p. 11-805.1 by Sec. 4, Ch. 146, L. 1974; Sec. 11-805.1, R.C.M. 1947; Ap. p. Sec. 4788, Pol. C. 1895; re-en. Sec. 3257, Rev. C. 1907; amd. Sec. 2, Ch. 88, L. 1913; re-en. Sec. 5034, R.C.M. 1921; Cal. Pol. C. Sec. 4392; re-en. Sec. 5034, R.C.M. 1935; Sec. 11-807, R.C.M. 1947; R.C.M. 1947, 11-805.1(part), 11-807(part).**

7-6-4602. Interest rate on deposited public money. Public money deposited pursuant to 7-6-4601 shall bear interest at a rate no less than the rate of interest paid on money from private sources on the same terms.

History: **Ap. p. 11-805.1 by Sec. 4, Ch. 146, L. 1974; Sec. 11-805.1, R.C.M. 1947; Ap. p. Sec. 4788, Pol. C. 1895; re-en. Sec. 3257, Rev. C. 1907; amd. Sec. 2, Ch. 88, L. 1913; re-en. Sec. 5034, R.C.M. 1921; Cal. Pol. C. Sec. 4392; re-en. Sec. 5034, R.C.M. 1935; Sec. 11-807, R.C.M. 1947; R.C.M. 1947, 11-805.1(part), 11-807(part); amd. Sec. 1, Ch. 21, L. 1989.**

7-6-4603. Investment of municipal money in city or town warrants. (1) Except as provided in 7-7-4102, whenever the city or town has, under its control and in any fund, any money for which there is no immediate demand and which, in the judgment of the city or town council, it would be advantageous to invest in city or town warrants, the city or town council may direct the city treasurer or town clerk to purchase legally issued city or town general obligation warrants of the same city or town thereafter issued against funds in which there is not sufficient funds to pay such city or town warrants at the time of issuance.

(2) (a) In case of such purchase, the city or town council shall designate the fund or funds to be invested and shall fix the amount thereof and shall also designate the city or town warrants which are to be purchased by such funds. The city or town clerk shall thereupon cause to be attached to or stamped, written, or printed upon the warrants ordered to be purchased a notice to the effect that the city or town will exercise its preference right to purchase such warrant.

(b) The city treasurer or town clerk shall thereafter, when such city or town warrant is presented to him, purchase the same out of the proper fund as designated by the city or town council. The warrant so purchased shall be registered as other city or town warrants and bear interest as provided by law.

(3) When the designated amounts have been invested, the city treasurer shall notify the city clerk.

History: **En. Sec. 1, Ch. 31, L. 1961; amd. Sec. 1, Ch. 10, L. 1963; amd. Sec. 2, Ch. 268, L. 1969; R.C.M. 1947, 11-1310(1); amd. Sec. 41, Ch. 252, L. 1979.**

CHAPTER 7

DEBT MANAGEMENT

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Chapter Cross-References

Local government debt, Art. VIII, sec. 10, Mont. Const.

Part 1

General Provisions Related to Local Governments

7-7-101. Submission of local government general obligation bond proceedings to attorney general for review. The governing body of any county, city, or town shall submit a certified copy of all proceedings preliminary to the issue of general obligation bonds to the attorney general, together with such other proceedings, certificates, and records as he may require, and request his report as to validity.

History: En. Sec. 1, Ch. 139, L. 1939; R.C.M. 1947, 82-410(part); amd. Sec. 1, Ch. 248, L. 1979.

7-7-102. Reason for review by attorney general. Sections 7-7-101 through 7-7-104 are intended to improve the marketability of general obligation bonds issued by counties, cities, or towns in order that these bonds may be sold upon the most favorable terms.

History: En. Sec. 4, Ch. 139, L. 1939; R.C.M. 1947, 82-413(part); amd. Sec. 2, Ch. 248, L. 1979.

7-7-103. Review by attorney general — report — review of citizen bonds. (1) The attorney general shall examine certified copies of all proceedings preliminary to the issuance of general obligation bonds by any county, city, or town that are submitted for examination, and if the proceedings are found to be regular and valid, the attorney general shall deliver to the recording officer of the local government a report of the examination and determination.

(2) A certified copy of the report must be filed with the officer required by law to register the bonds, and a notation of the filing must be entered in the bond register.

(3) Within 10 days of receipt of the notice provided for in 7-7-2213 and 7-7-4212, the attorney general may impose any requirements considered necessary to adequately protect both the issuing city or town and the purchasers of the bonds.

History: En. Sec. 2, Ch. 139, L. 1939; R.C.M. 1947, 82-411(part); amd. Sec. 3, Ch. 248, L. 1979; amd. Sec. 5, Ch. 511, L. 1989; amd. Sec. 5, Ch. 559, L. 1993.

Cross-References

Registration of bonds — county, 7-7-2257.

Registration of bonds — municipal, 7-7-4257.

Securities regulation, Title 30, ch. 10.

7-7-104. Limitation on action to test bond validity. No local government general obligation bond of any issue, whereof the preliminary proceedings have been submitted to and approved by the attorney general, may be held invalid because of any defect or failure to comply with any statutory provision relating to the authorization, issuance, or sale of the bonds unless an action to contest the validity thereof is brought within 30 days after the date of sale.

History: En. Sec. 3, Ch. 139, L. 1939; R.C.M. 1947, 82-412; amd. Sec. 4, Ch. 248, L. 1979.

7-7-105. Challenges to local government bond elections. (1) No action may be brought for the purpose of restraining the issuance and sale of bonds or other obligations by any county, city, town, or political subdivision of the state or for the purpose of restraining the levy and collection of taxes for the payment of such bonds or other obligations after the expiration of 60 days from the date of the election on such bonds or obligations or, if no election was held thereon, after the expiration of 60 days from the date of the order, resolution, or ordinance authorizing the issuance thereof, on account of any defect, irregularity, or informality in giving notice of or in holding the election. No defense based upon any such defect, irregularity, or informality may be interposed in any action unless brought within this period. This subsection applies but is not limited to any action and defense in which the issue is raised whether a voted debt or liability has carried by the required majority vote of the electors qualified and offering to vote thereon.

(2) (a) Any elector qualified to vote in a bond election of a county, a city, or any political subdivision of either may contest a bond election for any of the following causes:

(i) that the precinct board, in conducting the election or in canvassing the returns, made errors sufficient to change the result of the election;

(ii) that any official charged with a duty under the election laws failed to perform that duty;

(iii) that in conducting the election, any official charged with a duty under the election laws violated any of the provisions of Title 13 relating to bond elections;

(iv) that electors qualified to vote in the election under the provisions of the constitutions of Montana and the United States were not given opportunity to vote in the election;

(v) that electors not qualified to vote in the election under the provisions of the constitutions of Montana and the United States were permitted to vote in the election.

(b) Within 60 days after the election, the contestant shall file a verified petition with the clerk of the court in the judicial district where the election was held.

(3) The word "action", as used in this section, is to be construed, whenever it is necessary to do so, as including a special proceeding of a civil nature.

History: (1)En. Sec. 1, Ch. 114, L. 1919; re-en. Sec. 9040, R.C.M. 1921; re-en. Sec. 9040, R.C.M. 1935; amd. Sec. 15, Ch. 158, L. 1971; Sec. 93-2612, R.C.M. 1947; (2)En. Sec. 212, Ch. 368, L. 1969; amd. Sec. 6, Ch. 158, L. 1971; Sec. 23-4201, R.C.M. 1947; (3)En. Sec. 559, C. Civ. Proc. 1895; re-en. Sec. 6476, Rev. C. 1907; re-en. Sec 9066, R.C.M. 1921; Cal. C. Civ. Proc. Sec. 363; re-en. Sec. 9066, R.C.M. 1935; Sec. 93-2720, R.C.M. 1947; R.C.M. 1947, 23-4201, 93-2612(part), 93-2720; amd. Sec. 1, Ch. 212, L. 1979.

7-7-106. Hearing and determination on challenge. (1) Within 5 days after the petition is filed, the district judge shall designate the time and place of hearing.

(2) The clerk shall immediately issue a citation for the defendant to appear at the time and place specified in the order and shall serve the citation immediately upon the defendant either:

(a) personally; or

(b) if the party cannot be found, by leaving a copy at the house where he last resided.

(3) The court shall meet at the time and place designated to determine the contested election and shall have all the powers necessary to the determination thereof.

(4) The court shall be governed by the rules of law and evidence governing the determination of questions of law and fact so far as the same may be applicable.

(5) The court shall continue in special session to hear and determine all issues in the contested election. After hearing the proofs and allegations of the parties and within 10 days after submission thereof, the court shall file its findings of fact and conclusions of law and shall immediately pronounce judgment in the premises, either confirming or annulling and setting aside the election. The judgment shall be entered immediately thereafter.

History: En. Sec. 213, Ch. 368, L. 1969; R.C.M. 1947, 23-4202.

7-7-107. Limitation on amount of bonds for city-county consolidated units. (1) Except as provided in 7-7-108, no city-county consolidated local government may issue bonds for any purpose which, with all outstanding indebtedness, may exceed 39% of the taxable value of the property therein subject to taxation as ascertained by the last assessment for state and county taxes.

(2) The issuing of bonds for the purpose of funding or refunding outstanding warrants or bonds is not the incurring of a new or additional indebtedness but is merely the changing of the evidence of outstanding indebtedness.

History: En. 16-2010.1 by Sec. 1, Ch. 175, L. 1975; amd. Sec. 39, Ch. 566, L. 1977; R.C.M. 1947, 16-2010.1(part); amd. Sec. 43, Ch. 614, L. 1981.

7-7-108. Authorization for additional indebtedness for water or sewer systems. (1) For the purpose of constructing a sewer system or procuring a water supply or constructing or acquiring a water system for a city-county consolidated government which shall own and control such water supply and water system and devote the revenues therefrom to the payment of the debt, a city-county consolidated government may incur an additional indebtedness by borrowing money or issuing bonds.

(2) The additional indebtedness which may be incurred by borrowing money or issuing bonds for the construction of a sewer system or for the procurement of a water supply or for both such purposes may not in the aggregate exceed 10% over and above the 39% referred to in 7-7-107 of the taxable value of the property therein subject to taxation as ascertained by the last assessment for state and county taxes.

History: En. 16-2010.1 by Sec. 1, Ch. 175, L. 1975; amd. Sec. 39, Ch. 566, L. 1977; R.C.M. 1947, 16-2010.1(part); amd. Sec. 44, Ch. 614, L. 1981.

7-7-109. Definitions — sale of notes in anticipation of federal or state revenue or issuance of bonds. (1) As used in this section, the following definitions apply:

(a) "Bonds" means bonds, notes, warrants, debentures, certificates of indebtedness, and all instruments or obligations evidencing or representing indebtedness, or evidencing or representing the borrowing of money, or evidencing or representing a charge, lien, or encumbrance on specific revenue, special assessments, income, or property of a political subdivision, including all instruments or obligations payable from a special fund.

(b) "Governing body" means the board, council, commission, or other body charged with the general control of the issuance of bonds of a political subdivision.

(c) (i) "Political subdivision" means a county, city, town, school district, irrigation district, rural special improvement district, special improvement district, county water or sewer district, or any other political subdivision of the state.

(ii) The term does not include the state or any board, agency, or commission of the state.

(2) When all conditions exist precedent to the offering for sale of bonds of a political subdivision in any amount and for any purpose authorized by law and the political subdivision has applied for and received a commitment for a grant or loan of state or federal funds or has received a commitment from a person or entity to purchase bonds to aid in payment of costs incurred or to be incurred for the authorized purpose, its governing body may by resolution issue and sell notes in anticipation of the receipt of the grant, loan, or bonds in an amount not exceeding the total amount of bonds authorized and maturing within not more than 3 years from the date on which the notes are issued. The outstanding term of the notes issued under this section may not reduce the term of the bonds otherwise permitted by law. Before the notes are issued, the political subdivision must receive a written commitment for a grant, loan, or bond purchase in an amount that is not less than the principal amount of the notes and shall by resolution agree to fulfill any conditions of the commitment.

(3) The proceeds of the grant, loan, or bonds, when received, must be credited to the debt service fund for the notes as may be needed for their payment, with interest, when due.

(4) Any amount of the notes that cannot be paid at maturity from the proceeds of the grant, loan, or bond sale or from any other funds appropriated by the governing body for the purpose must be paid from the proceeds of bonds to be issued and sold before the maturity date, or if sufficient funds are not available for payment in full of the notes at maturity, the holders of the notes have the right to require the issuance of bonds in exchange for the notes, with the bonds maturing as amortization bonds, bearing interest at a rate, and secured over a term as provided in the resolution authorizing the issuance of the notes. If notes are validly issued under then applicable law, the political subdivision may issue bonds in a principal amount equal to the outstanding principal amount of the notes, regardless of any limitation in the then applicable law concerning the principal amount of the bonds.

History: En. Secs. 1, 2, Ch. 181, L. 1979; amd. Sec. 1, Ch. 512, L. 1985; amd. Sec. 2, Ch. 423, L. 1995.

Compiler's Comments

1995 Amendment: Chapter 423 in (2), in first sentence after "applied for", inserted "and received a commitment for", after "federal funds" inserted "or has received a commitment from a person or entity to purchase bonds", and after "loan" inserted "or bonds", inserted second sentence concerning outstanding term of notes, and inserted third sentence concerning written commitment prior to issuance; in (3), after "loan", inserted "or bonds"; in (4), in first sentence after "loan", inserted "or bond sale", after "maturity" substituted "the holders of the notes have the right to" for "those bondholders may, in exchange", before "bonds" deleted "long-term", and at end inserted "in exchange for the notes with the bonds maturing as amortization bonds, bearing interest at a rate, and secured over a term as provided in the resolution authorizing the issuance of the notes", inserted second sentence concerning issuing bonds in an amount equal to outstanding notes, and deleted former second, third, and fourth sentences that read: "The bonds so issued are secured and subject to the terms and conditions provided by the law authorizing their issuance. Notes and bonds may be issued as provided in this section regardless of the amount authorized if the amount which may legally be issued is less than the commitment for which the grant or loan is made. Before the notes or bonds are issued, the political subdivision must receive a written commitment for a grant or loan in an amount equal to the remaining estimated costs and must by resolution provide for the fulfillment of the conditions of the commitment"; and made minor changes in style. Amendment effective April 13, 1995.

Applicability: Section 53, Ch. 423, L. 1995, provided: "[This act] applies to bonds issued under the provisions of [this act] after [the effective date of this act]." Effective April 13, 1995.

7-7-110 through 7-7-120 reserved.

7-7-121. Misconduct in relation to bond funds. (1) (a) Except as provided in subsection (1)(b), when any officer or officers or board or body of officers of any county, city, or other municipal or public corporation of the state are or shall be required by law to provide by a levy of taxes or by certifying the amount of money required or otherwise a sinking fund or fund required to pay at maturity any bonds hereafter issued or created, such officer or officers and the members of such board or body of officers shall be jointly and severally liable to the county, city, or other municipal or public corporation which they represent if they shall fail to perform any such duties required by law, as specified in this section, in an amount equal to the sum which would have been added to such fund had they performed such duty.

(b) When any such board shall fail or neglect to perform any such duty, no minority member of said board who shall have moved said board or voted in favor of a performance of such duty shall be held liable.

(2) Any person or persons who shall take, use, or appropriate or permit to be taken, used, or appropriated any portion of any such fund as herein specified for any purpose other than that permitted by law shall be jointly and severally liable to the county, city, or other municipal or public corporation to which said fund shall belong for the portion of such fund so unlawfully taken, used, or appropriated.

History: (1)En. Sec. 1, Ch. 5, L. 1923; re-en. Sec. 463.1, R.C.M. 1935; Sec. 59-534, R.C.M. 1947; (2)En. Sec. 2, Ch. 5, L. 1923; re-en. Sec. 463.2, R.C.M. 1935; Sec. 59-535, R.C.M. 1947; R.C.M. 1947, 59-534(part), 59-535(part).

7-7-122. Prosecution for misconduct. It shall be the duty of the county attorney in each county to commence and prosecute all actions to enforce any liability created in 7-7-121. Such actions shall be tried as civil actions at law.

History: En. Sec. 3, Ch. 5, L. 1923; re-en. Sec. 463.3, R.C.M. 1935; R.C.M. 1947, 59-536.

7-7-123. Investment of sinking funds of local governments. (1) (a) Except as provided in 7-7-124 and whenever outstanding bonds cannot be purchased pursuant to 7-7-2270 or 7-7-4270, the board of county commissioners of a county and the council or commission of a city or town shall invest so much of the bond sinking funds of the county, city, or town as are not needed for the payment of bonds or interest coupons in general obligation bonds or securities of the United States; state bonds or securities; time or savings deposits; county, city, or school district bonds; county or city warrants; or other bonds or securities that are supported by general taxation, except irrigation district bonds and special improvement district or maintenance district bonds or warrants.

(b) All those bonds, securities, or time or savings deposits must be due and payable at least 60 days before the obligations for the payment of which the sinking fund was established are due and payable.

(2) The bonds, securities, and any time or savings deposits in which any sinking funds are invested must be kept in the custody of the county or city treasurer or town clerk and held for the benefit of the county, city, or town. The treasurer shall properly protect the bonds, securities, and any time or savings deposits by insurance, the use of safety deposit boxes, or other means, the expense of which is a proper charge against the county, city, or town.

(3) All money derived from interest on sinking fund investments as authorized by this section must be credited by the treasurer of the county or city or the town clerk to the sinking fund for which the investment was made.

History: En. Sec. 1, Ch. 86, L. 1923; re-en. Sec. 4622.1, R.C.M. 1935; amd. Sec. 1, Ch. 37, L. 1939; amd. Sec. 1, Ch. 11, L. 1963; amd. Sec. 68, Ch. 348, L. 1974; R.C.M. 1947, 16-2001(part); amd. Sec. 1, Ch. 256, L. 1979; amd. Sec. 7, Ch. 274, L. 1981; amd. Sec. 1, Ch. 287, L. 1983; amd. Sec. 8, Ch. 179, L. 1995.

Compiler's Comments

1995 Amendment: Chapter 179 in (1), at end, deleted "All those investments must first be approved by the department of commerce"; and made minor changes in style. Amendment effective July 1, 1995.

Cross-References

Department of Commerce, Title 2, ch. 15, part 18.

7-7-124. Limitation on investment of sinking funds. If any of the bonds for which the sinking fund was established are not yet due but are then redeemable under optional provisions, the money in the sinking fund is not subject to investment but shall be used and applied in payment and redemption of the bonds.

History: **En. Sec. 1, Ch. 86, L. 1923; re-en. Sec. 4622.1, R.C.M. 1935; amd. Sec. 1, Ch. 37, L. 1939; amd. Sec. 1, Ch. 11, L. 1963; amd. Sec. 68, Ch. 348, L. 1974; R.C.M. 1947, 16-2001(part); amd. Sec. 2, Ch. 256, L. 1979.**

7-7-125 through 7-7-130 reserved.

7-7-131. Bankruptcy — definitions. As used in 7-7-132 through 7-7-134 and this section, the following definitions apply:

(1) "Legislative body" means:

(a) the governing body of a city or town;

(b) the governing body of a local entity that is a district if, by law, the district must have a governing body; or

(c) the governing body of the city, town, or county that created a local entity that is a district if law does not require the district to have a separate governing body. Unless otherwise agreed to by the governing bodies of the county and of the city or town, a joint board composed of an equal number of members from each governing body shall act as the district governing body of a district that was jointly created by the county and the city or town.

(2) "Local entity" means a district created under Title 7, chapter 12, a city, or a town, but the term does not include a county.

History: **En. Sec. 1, Ch. 296, L. 1995.**

7-7-132. Procedure to declare bankruptcy. (1) A local entity may submit itself and a proposed plan of adjustment to the jurisdiction of the bankruptcy court having jurisdiction of the matter. If the local entity submits a proposed plan of adjustment, it is governed, subject to the provisions of Montana law applicable to the local entity, by the proceedings, orders, and decrees of the court as provided by the federal municipal bankruptcy laws.

(2) The local entity shall compose and enter into, submit itself to, and perform the plan of adjustment as required by the federal laws and the orders and decrees of the bankruptcy court:

(a) upon the adoption by its legislative body of an ordinance or resolution:

(i) declaring that it is insolvent or unable to meet its debts as they mature;

(ii) declaring that it desires to effect a plan for the adjustment of its debts under the provisions of the federal municipal bankruptcy laws; and

(iii) providing that the local entity shall proceed to the adjustment of its indebtedness under the provisions of the federal laws; and

(b) upon the acceptance or considered acceptance of the proposed plan of adjustment of the petitioning local entity as provided in the federal laws.

History: **En. Sec. 1, Ch. 114, L. 1939; R.C.M. 1947, 11-1303; amd. Sec. 3, Ch. 212, L. 1979; amd. Sec. 2, Ch. 296, L. 1995; Sec. 7-7-4111, MCA 1993; redes. 7-7-132 by Code Commissioner, 1995.**

Compiler's Comments

1995 Amendment: Chapter 296 in (1), in first sentence at beginning, substituted "A local entity" for "Any city or town" and near middle substituted "adjustment" for "composition" and in second sentence, at beginning, inserted "If the local entity submits a proposed plan of adjustment, it is" and after "governed" inserted "subject to the provisions of Montana law applicable to the local entity"; in (2), at beginning of introductory clause, substituted "local entity shall" for "city or town may" and near middle substituted "adjustment" for "composition"; in (2)(a) substituted "legislative body" for "city council or town council"; in (2)(a)(ii) substituted "adjustment" for "composition"; in (2)(a)(iii) substituted "local entity" for "city or town", substituted "adjustment" for "composition", and before "indebtedness" deleted "municipal"; substituted (2)(b) regarding acceptance of the proposed plan for former language that read: "upon the acceptance in writing of the proposed plan of composition of municipal indebtedness by creditors of the petitioning municipal corporation owning not less than the percentage thereof in amount of the municipal securities affected or to be affected by the proposed plan of composition, as provided in the federal laws"; and made minor changes in style.

7-7-133. Power to comply with court decrees related to bankruptcy. A local entity shall comply with all orders and decrees contemplated by the federal municipal bankruptcy laws and may issue its bonds and other securities for the carrying out and consummation of the adjustment of its debts as provided and contemplated by the federal law and as required by the orders and decrees of the bankruptcy court. The orders and decrees of the bankruptcy court must be based on the Montana law applicable to the local entity.

History: En. Sec. 2, Ch. 114, L. 1939; R.C.M. 1947, 11-1304(part); amd. Sec. 4, Ch. 212, L. 1979; amd. Sec. 3, Ch. 296, L. 1995; Sec. 7-7-4112, MCA 1993; redes. 7-7-133 by Code Commissioner, 1995.

Compiler's Comments

1995 Amendment: Chapter 296 at beginning of first sentence substituted "A local entity shall" for "Any city or town may" and near middle substituted "adjustment" for "composition" and inserted second sentence requiring that orders and decrees of the Bankruptcy Court be based on applicable Montana law.

7-7-134. Role of state and state agencies in relation to bankruptcy. The state or any department or agency of the state holding any of the securities of a local entity has the power to consent to any plan of adjustment of the indebtedness of the local entity by the board or official that has custody of and control over the securities.

History: En. Sec. 2, Ch. 114, L. 1939; R.C.M. 1947, 11-1304(part); amd. Sec. 4, Ch. 296, L. 1995; Sec. 7-7-4113, MCA 1993; redes. 7-7-134 by Code Commissioner, 1995.

Compiler's Comments

1995 Amendment: Chapter 296 in two places substituted "local entity" for "city or town", near middle, after "plan of", substituted "adjustment" for "composition", after "board" inserted "or official", and at end deleted "or by any other official or officials having such custody and control"; and made minor changes in style.

Parts 2 through 20 reserved

Part 21

General Provisions Related to Counties

7-7-2101. Limitation on amount of county indebtedness. (1) A county may not become indebted in any manner or for any purpose to an amount, including existing indebtedness, in the aggregate exceeding 23% of the total of the taxable value of the property in the county subject to taxation, plus the value provided by the department of revenue in 15-36-324(10), as ascertained by the last assessment for state and county taxes previous to the incurring of the indebtedness, plus, for indebtedness to be incurred during fiscal year 1997, an additional 11% of the taxable value of class eight property within the county for tax year 1995, for indebtedness to be incurred during fiscal year 1998, an additional 22% of the taxable value of class eight property within the county for tax year 1995, and for indebtedness to be incurred during fiscal years 1999 through 2008, an additional 33% of the taxable value of class eight property within the county for tax year 1995, in each case of class eight property, multiplied by 23%.

(2) A county may not incur indebtedness or liability for any single purpose to an amount exceeding $500,000 without the approval of a majority of the electors of the county voting at an election to be provided by law, except as provided in 7-21-3413 and 7-21-3414.

(3) This section does not apply to the acquisition of conservation easements as set forth in Title 76, chapter 6.

History: En. Sec. 4196, Pol. C. 1895; re-en. Sec. 2876, Rev. C. 1907; re-en. Sec. 4447, R.C.M. 1921; re-en. Sec. 4447, R.C.M. 1935; amd. Sec. 1, Ch. 486, L. 1973; amd. Sec. 1, Ch. 19, L. 1975; amd. Sec. 35, Ch. 566, L. 1977; R.C.M. 1947, 16-807(part); amd. Sec. 4, Ch. 134, L. 1981; amd. Sec. 45, Ch. 614, L. 1981; amd. Sec. 1, Ch. 584, L. 1985; amd. Sec. 6, Ch. 695, L. 1985; amd. Sec. 2, Ch. 655, L. 1987; amd. Sec. 67, Ch. 11, Sp. L. June 1989; amd. Sec. 11, Ch. 9, Sp. L. November 1993; amd. Sec. 22, Ch. 451, L. 1995; amd. Sec. 11, Ch. 570, L. 1995.

Compiler's Comments

1995 Amendments: Chapter 451 in (1), after "plus the", substituted "value provided by the department of revenue in 15-36-324(10)" for previous formula (see 1995 Session Law for text). Amendment effective January 1, 1996.

Chapter 570 in middle of (1), after "indebtedness", inserted language revising county government indebtedness limitations (see 1995 Session Law for text).

Applicability: Section 55, Ch. 451, L. 1995, provided: "(1) [This act] applies to oil and natural gas produced and sold on or after January 1, 1996.

(2) (a) [Sections 21 through 26] [7-1-2111, 7-7-2101, 7-7-2203, 7-14-2524, 7-14-2525, and 7-16-2327] apply to county fiscal years beginning after June 30, 1996.

(b) [Sections 38 through 46] [20-9-104, 20-9-141, 20-9-161, 20-9-331, 20-9-333, 20-9-501, 20-9-507, 20-10-144, and 20-10-146] apply to school fiscal years beginning after June 30, 1996.

(3) (a) An operator is subject to provisions of Title 15, chapter 23, parts 1 and 6; Title 15, chapter 36; Title 15, chapter 38; and Title 82, chapter 11, part 1, as those laws read on December 31, 1995, for all oil and natural gas produced and sold by the operator before January 1, 1996.

(b) Except as provided in subsection (3)(c), the payment, collection, and distribution of taxes on oil and natural gas production occurring before January 1, 1996, must be made according to the provisions of the laws referred to in subsection (3)(a) governing the tax in effect on the last day of the tax period in which the activity, enterprise, or product being taxed was engaged in, took place, or was produced and sold.

(c) [Section 19] [15-36-325] applies to the payment, collection, and distribution of the local government severance tax for oil and natural gas produced and sold after December 31, 1994, and before January 1, 1996.

(d) All taxes collected pursuant to audit or collected after the date the tax is payable under the laws referred to in subsection (3)(a) must be distributed according to the statute governing allocation of the tax in effect on the date when the tax liability was incurred."

Cross-References

Local government debt, Art. VIII, sec. 10, Mont. Const.

7-7-2102. Effect of exceeding limits on indebtedness. All bonds or obligations in excess of such amount given by or on behalf of the county are void.

History: En. Sec. 4196, Pol. C. 1895; re-en. Sec. 2876, Rev. C. 1907; re-en. Sec. 4447, R.C.M. 1921; re-en. Sec. 4447, R.C.M. 1935; amd. Sec. 1, Ch. 486, L. 1973; amd. Sec. 1, Ch. 19, L. 1975; amd. Sec. 35, Ch. 566, L. 1977; R.C.M. 1947, 16-807(part).

7-7-2103. Restriction on use of county credit by private persons. No county must ever give or loan its credit in aid of or make any donation or grant, by subsidy or otherwise, to any individual, association, or corporation or become a subscriber to or a shareholder in any company or corporation or a joint owner with any person, company, or corporation.

History: **En. Sec. 4194, Pol. C. 1895; re-en. Sec. 2874, Rev. C. 1907; re-en. Sec. 4445, R.C.M. 1921; Cal. Pol. C. Sec. 4004; re-en. Sec. 4445, R.C.M. 1935; R.C.M. 1947, 16-805.**

7-7-2104. Replacement of lost bond, warrant, or coupon. (1) The board may issue a duplicate warrant, bond, or coupon whenever any warrant, bond, or coupon drawn by it upon the treasury of the county is lost or destroyed. The duplicate warrant, bond, or coupon must be in the same form as the original and will take the place in order of registration and payment of and supersede the original bond, warrant, or coupon. It must have the word "duplicate" plainly printed across its face.

(2) No duplicate warrant, bond, or coupon may be issued under this section unless the person entitled to receive the duplicate deposits with the county treasurer a bond in double the amount for which the duplicate warrant, bond, or coupon is issued, conditioned to render the county and its officers harmless from all loss, costs, or damages by reason of issuing the duplicate.

(3) No bond of indemnity is required:

(a) when a payee is the state of Montana or any agency, instrumentality, or officer of the state;

(b) when the owner or custodian is the state or any agency or officer thereof;

(c) when the owner or custodian is a bank, savings and loan association, credit union, admitted insurer, or trust company whose financial condition is regulated by the state;

(d) when it can be established that a crime has been committed and that as a result of such crime a county warrant, bond, or coupon has been stolen or destroyed; or

(e) when it can be established that a county warrant, bond, or coupon has been mailed to an incorrect payee.

(4) If the owner or custodian applies under the provisions of subsection (3)(d) or (3)(e), a stop-payment order shall be placed on the original warrant, bond, or coupon by the county treasurer.

(5) If the owner or custodian applies under the provisions of subsection (3)(c), (3)(d), or (3)(e), the application shall include an agreement to indemnify and hold the county or its officers and employees harmless from any loss resulting from the issuance of a duplicate warrant, bond, or coupon. Any loss incurred in connection with the issuance of a duplicate warrant shall be charged against the account from which the payment was derived.

History: **En. Secs. 1, 3, 4, p. 83, L. 1881; re-en. Secs. 4251, 4253, 4254, Pol. C. 1895; re-en. Secs. 2916, 2918, 2919, Rev. C. 1907; re-en. Secs. 4626, 4628, 4629, R.C.M. 1921; re-en. Secs. 4626, 4628, 4629, R.C.M. 1935; R.C.M. 1947, 16-2003, 16-2005, 16-2006; amd. Sec. 1, Ch. 110, L. 1979; amd. Sec. 7, Ch. 421, L. 1985.**

Cross-References

Financial Institutions, Title 32.

7-7-2105. Repealed. Sec. 3, Ch. 110, L. 1979.

History: **En. Sec. 2, p. 83, L. 1881; re-en. Sec. 4252, Pol. C. 1895; re-en. Sec. 2917, Rev. C. 1907; re-en. Sec. 4627, R.C.M. 1921; re-en. Sec. 4627, R.C.M. 1935; R.C.M. 1947, 16-2004.**

7-7-2106. Procedure if original bond, warrant, or coupon is presented. It is the duty of the county treasurer, upon the production to him of any original bond, warrant, or coupon by the lawful owner or holder thereof, to assign by endorsement and to deliver to him the surety bond mentioned in 7-7-2104. Such owner or holder may maintain an action in his own name upon such surety bond for the recovery of any money paid upon such duplicate, but the delivery of such surety bond does not relieve or exonerate the county from the payment of the amount specified therein upon a demand and refusal of the sureties named in the indemnifying surety bond to pay the same.

History: En. Sec. 5, p. 83, L. 1881; re-en. Sec. 4255, Pol. C. 1895; re-en. Sec. 2920, Rev. C. 1907; re-en. Sec. 4630, R.C.M. 1921; re-en. Sec. 4630, R.C.M. 1935; R.C.M. 1947, 16-2007; amd. Sec. 2, Ch. 110, L. 1979.

7-7-2107 through 7-7-2110 reserved.

7-7-2111. Authorization to issue construction bonds. The board of county commissioners has jurisdiction and power, under such limitations and restrictions as are prescribed by law, to issue on the credit of the county coupon bonds to an amount sufficient to secure the necessary funds for the procurement of necessary building sites, for the construction of necessary public buildings, and for the construction of bridges and highways, in accordance with the provisions of the code.

History: En. Subd. 27, Sec. 1, Ch. 100, L. 1931; re-en. Sec. 4465.26, R.C.M. 1935; R.C.M. 1947, 16-1029.

7-7-2112. Investment of certain construction bond proceeds. (1) Public funds realized from the sale of bonds by a county for the purpose of constructing public buildings or for other construction may be invested in any time or savings deposits, United States certificates of indebtedness, United States treasury notes, or United States treasury bonds having a maturity date of 1 year or less, when emergency conditions beyond the control of the county commissioners exist which preclude the construction of the projects for which the bonds were issued at the time such investments are made.

(2) Interest earned from such investments, including interest on the sale of bonds accrued in the period between the date of issue and the time of purchase, shall be credited to the sinking fund of the county, notwithstanding the provisions of 7-6-204(1).

(3) No provision of this section may be construed to prevent the investment of county or county high school money under the state unified investment program established in Title 17, chapter 6, part 2.

History: En. Sec. 1, Ch. 144, L. 1927; re-en. Sec. 4639.1, R.C.M. 1935; amd. Sec. 1, Ch. 151, L. 1951; amd. Sec. 1, Ch. 223, L. 1961; amd. Sec. 1, Ch. 13, L. 1963; amd. Sec. 1, Ch. 268, L. 1969; amd. Sec. 1, Ch. 421, L. 1973; amd. Sec. 1, Ch. 304, L. 1975; R.C.M. 1947, 16-2050(part).

Part 22

County General Obligation Bonds

7-7-2201. Purposes for which general obligation bonds of a county may be issued. The board of county commissioners of every county of the state is hereby vested with the power and authority to issue, negotiate, and sell coupon bonds on the credit of the county, as more specifically provided in this part, for any of the following purposes:

(1) acquiring land for sites and grounds for a public building or buildings of any kind within the county and under its control, which the county has lawful

authority to acquire or erect, control, and maintain except that if the bonds are sold to fund a multicounty jail facility, funds so raised may be used in the county in which the multicounty jail facility is located;

(2) acquiring land for any other public use or activity within the county, under its control and authorized by law;

(3) constructing, erecting, or acquiring by purchase necessary public buildings within the county, under its control and authorized by law; making additions to and repairing buildings; and furnishing and equipping the same except that if the bonds are sold to fund a multicounty jail facility, funds so raised may be used in the county in which the multicounty jail facility is located;

(4) building, purchasing, constructing, and maintaining devices intended to protect the safety of the public from open ditches carrying irrigation or other water;

(5) enabling a county to liquidate its indebtedness to another county incident to the creation of a new county or the changing of any county boundary line;

(6) funding, paying, and retiring outstanding county warrants lawfully issued against the county general fund, road fund, bridge fund, or poor fund when:

(a) there is not sufficient money in the fund against which such warrants are drawn to pay and retire such warrants; and

(b) the levying of taxes sufficient to pay and retire such warrants within a period of 3 years would, in the judgment of the board, work a hardship and be an undue burden upon the taxpayers of the county.

History: En. Sec. 1, Ch. 188, L. 1931; re-en. Sec. 4630.1, R.C.M. 1935; amd. Sec. 1, Ch. 135, L. 1937; amd. Sec. 1, Ch. 136, L. 1963; amd. Sec. 12-102, Ch. 197, L. 1965; amd. Sec. 5, Ch. 100, L. 1973; R.C.M. 1947, 16-2008(part); amd. Sec. 5, Ch. 447, L. 1985.

7-7-2202. Authority to issue general obligation bonds to satisfy judgments. (1) The board of county commissioners of every county of the state is hereby vested with the power and authority to issue, negotiate, and sell coupon bonds on the credit of the county, as more specifically provided in this part, for the purpose of funding, paying in full, or compromising, settling, and satisfying any judgment which may have been rendered against the county in a court of competent jurisdiction, including the repayment of tax protests lost by the county, when:

(a) there are not sufficient funds available to pay such judgment; and

(b) sufficient money cannot be raised to satisfy such judgment by an annual tax levy of 10 mills levied on all the taxable property within the county through a period of 3 years.

(2) The resolution providing for the issue of such bonds must recite the facts concerning the judgment to be funded and the terms of any compromise agreement which may have been entered into between the board and the judgment creditor.

History: En. Sec. 1, Ch. 188, L. 1931; re-en. Sec. 4630.1, R.C.M. 1935; amd. Sec. 1, Ch. 135, L. 1937; amd. Sec. 1, Ch. 136, L. 1963; amd. Sec. 12-102, Ch. 197, L. 1965; amd. Sec. 5, Ch. 100, L. 1973; R.C.M. 1947, 16-2008(part); amd. Sec. 4, Ch. 213, L. 1989.

7-7-2203. Limitation on amount of bonded indebtedness. (1) Except as provided in subsections (2) through (4), a county may not issue general obligation bonds for any purpose that, with all outstanding bonds and warrants except county high school bonds and emergency bonds, will exceed 11.25% of the total of the taxable value of the property in the county, plus the value provided by the department of revenue under 15-36-324(10), to be ascertained by the last assessment for state and county taxes prior to the proposed issuance of bonds, plus, for general obligation bonds to be issued during fiscal year 1997, an additional 11% of the taxable value of class eight property within the county for tax year 1995, for general obligation bonds to be issued during fiscal year 1998, an additional 22% of the taxable value of class eight property within the county for tax year 1995, and for general obligation bonds to be issued during fiscal years 1999 through 2008, an additional 33% of the taxable value of class eight property within the county for tax year 1995, in each case of class eight property, multiplied by 11.25%.

(2) In addition to the bonds allowed by subsection (1), a county may issue bonds that, with all outstanding bonds and warrants, will not exceed 27.75% of the total of the taxable value of the property in the county subject to taxation, plus the value provided by the department of revenue under 15-36-324(10), when necessary to do so, to be ascertained by the last assessment for state and county taxes, plus, for bonds to be issued during fiscal year 1997, an additional 11% of the taxable value of class eight property within the county for tax year 1995, for bonds to be issued during fiscal year 1998, an additional 22% of the taxable value of class eight property within the county for tax year 1995, and for bonds to be issued during fiscal years 1999 through 2008, an additional 33% of the taxable value of class eight property within the county for tax year 1995, in each case of class eight property, multiplied by 27.75%, for the purpose of acquiring land for a site for county high school buildings and for erecting or acquiring buildings on the site and furnishing and equipping the buildings for county high school purposes.

(3) In addition to the bonds allowed by subsections (1) and (2), a county may issue bonds for the construction or improvement of a jail that will not exceed 12.5% of the taxable value of the property in the county subject to taxation, plus the adjustments permitted by 7-7-2101.

(4) The limitation in subsection (1) does not apply to refunding bonds issued for the purpose of paying or retiring county bonds lawfully issued prior to January 1, 1932, or to bonds issued for the repayment of tax protests lost by the county.

History: En. Sec. 3, Ch. 188, L. 1931; amd. Sec. 1, Ch. 115, L. 1933; re-en. Sec. 4630.3, R.C.M. 1935; amd. Sec. 2, Ch. 135, L. 1937; amd. Sec. 12-103, Ch. 197, L. 1965; amd. Sec. 6, Ch. 100, L. 1973; amd. Sec. 6, Ch. 391, L. 1973; R.C.M. 1947, 16-2010(part); amd. Sec. 1, Ch. 332, L. 1979; amd. Sec. 1, Ch. 617, L. 1979; amd. Sec. 46, Ch. 614, L. 1981; amd. Sec. 6, Ch. 447, L. 1985; amd. Sec. 7, Ch. 695, L. 1985; amd. Sec. 3, Ch. 655, L. 1987; amd. Sec. 10, Ch. 213, L. 1989; amd. Sec. 68, Ch. 11, Sp. L. June 1989; amd. Sec. 12, Ch. 9, Sp. L. November 1993; amd. Sec. 23, Ch. 451, L. 1995; amd. Sec. 12, Ch. 570, L. 1995.

Compiler's Comments

1995 Amendments: Chapter 451 in (1) and (2), after "plus the", substituted "value provided by the department of revenue under 15-36-324(10)" for previous formula (see 1995 Session Law for text); and in (2), after "necessary to do so", deleted "plus the value of any other production occurring after December 31, 1988, multiplied by 60%". Amendment effective January 1, 1996.

Chapter 570 at end of (1), after "issuance of bonds", inserted language revising county government indebtedness limitations (see 1995 Session Law for text); in middle of (2), after "multiplied by 60%", inserted language limiting bonded indebtedness for class eight property (see 1995 Session Law for text); and at end of (3) inserted "plus the adjustments permitted by 7-7-2101".

Applicability: Section 55, Ch. 451, L. 1995, provided: "(1) [This act] applies to oil and natural gas produced and sold on or after January 1, 1996.

(2) (a) [Sections 21 through 26] [7-1-2111, 7-7-2101, 7-7-2203, 7-14-2524, 7-14-2525, and 7-16-2327] apply to county fiscal years beginning after June 30, 1996.

(b) [Sections 38 through 46] [20-9-104, 20-9-141, 20-9-161, 20-9-331, 20-9-333, 20-9-501, 20-9-507, 20-10-144, and 20-10-146] apply to school fiscal years beginning after June 30, 1996.

(3) (a) An operator is subject to provisions of Title 15, chapter 23, parts 1 and 6; Title 15, chapter 36; Title 15, chapter 38; and Title 82, chapter 11, part 1, as those laws read on December 31, 1995, for all oil and natural gas produced and sold by the operator before January 1, 1996.

(b) Except as provided in subsection (3)(c), the payment, collection, and distribution of taxes on oil and natural gas production occurring before January 1, 1996, must be made according to the provisions of the laws referred to in subsection (3)(a) governing the tax in effect on the last day of the tax period in which the activity, enterprise, or product being taxed was engaged in, took place, or was produced and sold.

(c) [Section 19] [15-36-325] applies to the payment, collection, and distribution of the local government severance tax for oil and natural gas produced and sold after December 31, 1994, and before January 1, 1996.

(d) All taxes collected pursuant to audit or collected after the date the tax is payable under the laws referred to in subsection (3)(a) must be distributed according to the statute governing allocation of the tax in effect on the date when the tax liability was incurred."

7-7-2204. Effect of issuing bonds in excess of limitations on amount. All bonds issued by any county in excess of the limitations fixed in 7-7-2203 shall be null and void.

History: En. Sec. 3, Ch. 188, L. 1931; amd. Sec. 1, Ch. 115, L. 1933; re-en. Sec. 4630.3, R.C.M. 1935; amd. Sec. 2, Ch. 135, L. 1937; amd. Sec. 12-103, Ch. 197, L. 1965; amd. Sec. 6, Ch. 100, L. 1973; amd. Sec. 6, Ch. 391, L. 1973; R.C.M. 1947, 16-2010(part).

7-7-2205. Nature of general obligation bonds. All bonds issued under the provisions of this part shall be legal and valid obligations of the county issuing the same, and the full faith and credit of such county are hereby irrevocably pledged for the prompt payment of both principal and interest thereof as the same become due.

History: En. Sec. 23, Ch. 188, L. 1931; re-en. Sec. 4630.23, R.C.M. 1935; R.C.M. 1947, 16-2037.

7-7-2206. Term of general obligation bonds. (1) Bonds issued for any of the purposes designated in 7-7-2201(1) through (4) may not be for a longer term than 20 years.

(2) Bonds issued for any of the purposes designated in 7-7-2201(5) and (6) may not be for a longer term than 10 years.

(3) Bonds issued for any of the purposes designated in 7-7-2202 may not be for a longer term than will be required to repay the bonds with interest through a tax levy of 10 mills on all the property within the county subject to taxation, and the term may not exceed 20 years.

(4) The length of the term required must be estimated and calculated by the board of county commissioners, based upon the percentage of valuation of the property upon which taxes are levied and paid within the county as ascertained from the last completed assessment for state and county taxes, taking into account probable changes in the taxable valuation and losses in tax collections. Irrespective of any miscalculation by the county commissioners in fixing the term of the bonds, the county shall from year to year make a sufficient tax levy to pay the interest and installments on principal on the bonds as the same fall due.

(5) For purposes of this section, the term of a bond issue commences on July 1 of the fiscal year in which the county first levies taxes to pay principal and interest on the bonds.

History: En. Sec. 4, Ch. 188, L. 1931; amd. Sec. 2, Ch. 115, L. 1933; re-en. Sec. 4630.4, R.C.M. 1935; amd. Sec. 3, Ch. 135, L. 1937; amd. Sec. 1, Ch. 33, L. 1943; amd. Sec. 6, Ch. 234, L. 1971; amd. Sec. 2, Ch. 284, L. 1973; R.C.M. 1947, 16-2011(part); amd. Sec. 1, Ch. 256, L. 1989.

7-7-2207. Redemption of bonds. All bonds issued for a longer term than 5 years shall be redeemable at the option of the county on any interest payment date after one-half of the term for which they were issued has expired, and it shall be so stated on the face of the bonds.

History: En. Sec. 4, Ch. 188, L. 1931; amd. Sec. 2, Ch. 115, L. 1933; re-en. Sec. 4630.4, R.C.M. 1935; amd. Sec. 3, Ch. 135, L. 1937; amd. Sec. 1, Ch. 33, L. 1943; amd. Sec. 6, Ch. 234, L. 1971; amd. Sec. 2, Ch. 284, L. 1973; R.C.M. 1947, 16-2011(part).

7-7-2208. Repealed. Sec. 2, Ch. 11, L. 1983.

History: En. Sec. 4, Ch. 188, L. 1931; amd. Sec. 2, Ch. 115, L. 1933; re-en. Sec. 4630.4, R.C.M. 1935; amd. Sec. 3, Ch. 135, L. 1937; amd. Sec. 1, Ch. 33, L. 1943; amd. Sec. 6, Ch. 234, L. 1971; amd. Sec. 2, Ch. 284, L. 1973; R.C.M. 1947, 16-2011(part).

7-7-2209. Types of bonds. (1) Except as provided in subsection (2), bonds issued by any county must be either amortization bonds or serial bonds. All things being equal, amortization bonds must be issued in preference to serial bonds; otherwise, serial bonds may be issued.

(2) Citizen bonds may be amortization bonds, serial bonds, term bonds, capital appreciation bonds, or zero-coupon bonds, with no preference for amortization bonds.

History: En. Sec. 5, Ch. 188, L. 1931; re-en. Sec. 4630.5, R.C.M. 1935; amd. Sec. 1, Ch. 112, L. 1961; R.C.M. 1947, 16-2012(part); amd. Sec. 6, Ch. 559, L. 1993.

7-7-2210. Amortization bonds. The term "amortization bonds", as used in this part, means that form of bond on which a part of the principal is required to be paid each time that interest becomes due and payable. The part payment of principal increases with each following installment in the same amount that the interest payment decreases, so that the combined amount payable on principal and interest is the same on each interest payment date. However, the payment on the initial interest payment date may be less or greater than the amount of other payments on the bond, reflecting the payment of interest only or the payment of interest for a period different from that between other interest payment dates. The final payment may vary in amount from the other payments to the extent resulting from rounding amounts in the other payments.

History: En. Sec. 5, Ch. 188, L. 1931; re-en. Sec. 4630.5, R.C.M. 1935; amd. Sec. 1, Ch. 112, L. 1961; R.C.M. 1947, 16-2012(part); amd. Sec. 3, Ch. 423, L. 1995.

Compiler's Comments

1995 Amendment: Chapter 423 inserted third sentence concerning initial interest payment; in fourth sentence substituted "rounding amounts" for "disregarding fractional cents"; and made minor changes in style. Amendment effective April 13, 1995.

Applicability: Section 53, Ch. 423, L. 1995, provided: "[This act] applies to bonds issued under the provisions of [this act] after [the effective date of this act]." Effective April 13, 1995.

7-7-2211. Serial bonds. The term "serial bonds", as used in this part, means a bond issue payable in annual installments commencing not more than

2 years from the date of issue, any one installment consisting of one or more bonds, with the principal amount of bonds maturing in each installment not exceeding three times the principal amount of the bonds maturing in the immediately preceding installment.

History: En. Sec. 5, Ch. 188, L. 1931; re-en. Sec. 4630.5, R.C.M. 1935; amd. Sec. 1, Ch. 112, L. 1961; R.C.M. 1947, 16-2012(part); amd. Sec. 1, Ch. 631, L. 1983; amd. Sec. 2, Ch. 256, L. 1989.

7-7-2212. Citizen bonds authorized. (1) A county authorized to sell general obligation bonds under this chapter may issue and sell a portion of the bonds in denominations of less than $5,000, either by competitive public sale or directly to members of the public, at preestablished interest rates.

(2) Bonds issued under 7-7-2212 through 7-7-2215 may be known as "citizen bonds".

(3) Citizen bonds may be issued for any purpose for which a county may issue general obligation bonds.

(4) An officer, employee, contracted financial consultant, or contracted adviser employed or retained by a county selling citizen bonds may not purchase those bonds.

History: En. Sec. 1, Ch. 559, L. 1993.

7-7-2213. Citizen bonds — procedural requirements prior to issuance. (1) Prior to the final passage of the resolution provided for in 7-7-2238, a county shall notify the attorney general of its intention to issue citizen bonds.

(2) Prior to issuing citizen bonds, a county shall make available to interested investors:

(a) a preliminary official statement, a draft-form legal opinion from a recognized bond counsel, and a comparison to taxable yields at various income levels;

(b) application forms for the purchase of citizen bonds that must specify at a minimum:

(i) the time, date, and place that applications will be received, the manner in which applications will be processed, and the conditions under which the sale may be canceled if the issue is not fully subscribed during the application period;

(ii) the issue date, maturity dates, and the dates on which interest will be earned and paid;

(iii) the denominations of the bonds and the maximum amount of the bonds that one buyer may purchase;

(iv) the approximate yield on the bonds if held to maturity and the manner in which interest rates have been calculated; and

(v) the provision made for the transfer of ownership of outstanding bonds; and

(c) other information that the attorney general may require.

History: En. Sec. 2, Ch. 559, L. 1993.

7-7-2214. Citizen bonds — procedure when issue not fully subscribed. If an entire issue of bonds is not fully subscribed during the period of time that the county has set for the sale of the bonds, the citizen bonds may be sold in the manner permitted for other county general obligation bonds.

History: En. Sec. 3, Ch. 559, L. 1993.

7-7-2215. Zero-coupon bonds and capital appreciation bonds. The terms "zero-coupon bonds" and "capital appreciation bonds", as used in this part, mean those forms of bonds that do not make periodic interest payments but, rather, are sold at a discount from their face value.

History: En. Sec. 4, Ch. 559, L. 1993.

7-7-2216 through 7-7-2220 reserved.

7-7-2221. Issuance of certain general obligation bonds without election. Bonds may be issued without submitting the same to an election if the bonds are issued for the purpose of:

(1) enabling a county to liquidate its indebtedness to another county incident to the creation of a new county or the changing of a county boundary line, as set forth in 7-7-2201(5); and

(2) funding, paying in full, or compromising, settling, and satisfying any judgment which may have been rendered against the county in a court of competent jurisdiction, as set forth in 7-7-2202 and 15-1-402.

History: En. Sec. 6, Ch. 188, L. 1931; re-en. Sec. 4630.6, R.C.M. 1935; amd. Sec. 4, Ch. 135, L. 1937; amd. Sec. 2, Ch. 33, L. 1943; R.C.M. 1947, 16-2013(part); amd. Sec. 5, Ch. 213, L. 1989.

7-7-2222. Procedure to issue bonds without election. (1) In order to issue bonds for any of the purposes referred to in 7-7-2221 and 7-7-2311, it shall only be necessary for the board of county commissioners, at a regular or duly called special meeting, to pass and adopt a resolution setting forth the facts in regard to the indebtedness to be paid or bonds to be refunded, showing the reason for issuing such bonds and fixing and determining the details thereof, and give notice of the sale thereof in the same manner that notice is required to be given of the sale of bonds authorized at an election and to then follow the procedure prescribed in this part for the sale and issuance of such bonds.

(2) All bonds sold without submitting the question of their issue to an election, as authorized in 7-7-2221 and 7-7-2311, shall be sold at open competitive bidding, but all sealed and written bids submitted for the purchase of such bonds shall be considered the same as open bids.

History: En. Sec. 6, Ch. 188, L. 1931; re-en. Sec. 4630.6, R.C.M. 1935; amd. Sec. 4, Ch. 135, L. 1937; amd. Sec. 2, Ch. 33, L. 1943; R.C.M. 1947, 16-2013(part).

7-7-2223. Election required for issuance of certain bonds. (1) County bonds for any purpose other than those enumerated in 7-7-2221 and 7-7-2311 may not be issued unless authorized at a special election held in conjunction with a regular or primary election or a general election at which the question of issuing the bonds is submitted to the registered electors of the county and approved as provided in 7-7-2237.

(2) A bond election may not be called unless the board of county commissioners:

(a) initiates and unanimously adopts a resolution in accordance with the provisions of 7-7-2227(2); or

(b) receives a petition, delivered and certified by the election administrator, asking that the election be held and the question be submitted. The petition must be signed by at least 20% of the registered electors of the county.

History: En. Secs. 7, 8, Ch. 188, L. 1931; re-en. Secs. 4630.7, 4630.8, R.C.M. 1935; amd. Secs. 12, 13, Ch. 158, L. 1971; amd. Secs. 1, 2, Ch. 347, L. 1977; R.C.M. 1947,

16-2021(1), 16-2022(part); amd. Sec. 307, Ch. 571, L. 1979; amd. Sec. 1, Ch. 89, L. 1983; amd. Sec. 29, Ch. 387, L. 1995.

Compiler's Comments

1995 Amendment: Chapter 387 in (1) inserted "election held in conjunction with a regular or primary election"; and made minor changes in style.

Cross-References

Challenges to local government bond election, 7-7-105.

7-7-2224. Form and contents of petition. (1) Every petition for the calling of an election to vote upon the question of issuing county bonds shall plainly and clearly state the purpose or purposes for which the proposed bonds are to be issued and shall contain an estimate of the amount necessary to be issued for such purpose or purposes. There may be a separate petition for each purpose, or two or more purposes may be combined in one petition if each purpose, with an estimate of the amount of bonds necessary to be issued therefor, is separately stated in the petition.

(2) The petition shall be in the form provided in Title 13, chapter 27.

History: En. Sec. 8, Ch. 188, L. 1931; re-en. Sec. 4630.8, R.C.M. 1935; amd. Sec. 13, Ch. 158, L. 1971; amd. Sec. 2, Ch. 347, L. 1977; R.C.M. 1947, 16-2022(part); amd. Sec. 308, Ch. 571, L. 1979.

7-7-2225. Filing of petition with election administrator — certificate. (1) The completed petition shall be filed with the election administrator. The election administrator shall, within 15 days thereafter, carefully examine the petition and the county records showing the qualifications of the petitioners and attach a certificate, under his official signature and the seal of his office.

(2) The certificate shall set forth:

(a) the total number of individuals who are registered electors;

(b) which and how many of the individuals whose names are subscribed to the petition possess all of the qualifications required of signers of such a petition;

(c) whether such qualified signers constitute more or less than 20% of the registered electors of the county.

History: En. Sec. 8, Ch. 188, L. 1931; re-en. Sec. 4630.8, R.C.M. 1935; amd. Sec. 13, Ch. 158, L. 1971; amd. Sec. 2, Ch. 347, L. 1977; R.C.M. 1947, 16-2022(part); amd. Sec. 309, Ch. 571, L. 1979.

Cross-References

Local election administrator, Title 13, ch. 1, part 3.

7-7-2226. Delivery of certified petition to board of county commissioners. (1) After completing the certificate required by 7-7-2225, the election administrator shall deliver the certified petition to the board of county commissioners.

(2) When the petition has been filed with the election administrator and he has found that it has a sufficient number of signers qualified to sign it, he shall place it before the board at its first meeting held after he has attached his certificate thereto.

History: (1)En. Sec. 8, Ch. 188, L. 1931; re-en. Sec. 4630.8, R.C.M. 1935; amd. Sec. 13, Ch. 158, L. 1971; amd. Sec. 2, Ch. 347, L. 1977; Sec. 16-2022, R.C.M. 1947; (2)En. Sec. 9, Ch. 188, L. 1931; re-en. Sec. 4630.9, R.C.M. 1935; Sec. 16-2023, R.C.M. 1947; R.C.M. 1947, 16-2022(3), 16-2023(part); amd. Sec. 310, Ch. 571, L. 1979.

Cross-References

Local election administrator, Title 13, ch. 1, part 3.

7-7-2227. Examination of petition — resolution calling for election. (1) Upon delivery of the certified petition, the board shall carefully examine the petition and make any other investigation that it may consider necessary. If it is found that the petition is in proper form, bears the requisite number of signers of qualified petitioners, and is in all other respects sufficient, the board shall pass and adopt a resolution that contains the provisions of subsection (2) plus the essential facts in regard to the petition and its filing and presentation.

(2) The resolution must:

(a) recite the purpose or purposes for which the bonds are proposed to be issued;

(b) fix the exact amount of bonds proposed to be issued for each purpose, which amount may be less than but must not exceed the amount set forth in the petition;

(c) determine the number of years through which the bonds are to be paid, not exceeding the limitations fixed in 7-7-2206; and

(d) make provision for having the question submitted to the registered electors of the county at the next general election or at a special election that is held in conjunction with a regular or primary election and that the board may call for that purpose.

(3) Whenever a board of county commissioners initiates a resolution in accordance with the provisions of 7-7-2223, the resolution must contain the provisions of subsection (2).

History: En. Sec. 9, Ch. 188, L. 1931; re-en. Sec. 4630.9, R.C.M. 1935; R.C.M. 1947, 16-2023(part); amd. Sec. 311, Ch. 571, L. 1979; amd. Sec. 2, Ch. 89, L. 1983; amd. Sec. 30, Ch. 387, L. 1995.

Compiler's Comments

1995 Amendment: Chapter 387 in (2)(d) inserted "that is held in conjunction with a regular or primary election"; and made minor changes in style.

7-7-2228. Time of holding election on question of issuing bonds. The bond election required by 7-7-2223 may not be held any sooner than 90 days after receipt of the petition by the county commissioners and must be held no later than the first general election following the 90-day period.

History: En. Sec. 7, Ch. 188, L. 1931; re-en. Sec. 4630.7, R.C.M. 1935; amd. Sec. 12, Ch. 158, L. 1971; amd. Sec. 1, Ch. 347, L. 1977; R.C.M. 1947, 16-2021(2); amd. Sec. 312, Ch. 571, L. 1979.

7-7-2229. Notice of election. (1) Whether the election is held at the general election or at a special election held in conjunction with a regular or primary election, separate notice of the election must be given.

(2) (a) The notice must state:

(i) the date when the election will be held;

(ii) the amount of bonds proposed to be issued;

(iii) the purpose of the issue;

(iv) the term of years through which the bonds are to be paid; and

(v) other information regarding the holding of the election and the bonds proposed to be issued that the board may consider proper.

(b) If bonds are to be issued for two or more purposes, each purpose and the amount for each purpose must be separately stated.

(3) The notice must be published as provided in 13-1-108.

History: En. Sec. 10, Ch. 188, L. 1931; re-en. Sec. 4630.10, R.C.M. 1935; R.C.M. 1947, 16-2024(part); amd. Sec. 313, Ch. 571, L. 1979; amd. Sec. 31, Ch. 387, L. 1995.

Compiler's Comments

1995 Amendment: Chapter 387 in (1) inserted "held in conjunction with a regular or primary election"; deleted former (2)(a)(ii) that read: "(ii) the hours between which the polls will be open"; and made minor changes in style.

Cross-References

General election and special election defined, 13-1-101.

7-7-2230 through 7-7-2236. Repealed. Sec. 407, Ch. 571, L. 1979.

Compiler's Comments

Histories of Repealed Sections:

7-7-2230. En. Sec. 10, Ch. 188, L. 1931; re-en. Sec. 4630.10, R.C.M. 1935; R.C.M. 1947, 16-2024(part).

7-7-2231. En. Sec. 10, Ch. 188, L. 1931; re-en. Sec. 4630.10, R.C.M. 1935; R.C.M. 1947, 16-2024(part).

7-7-2232. (1)En. Sec. 1, p. 13, L. 1901; re-en. Sec. 2938, Rev. C. 1907; re-en. Sec. 4722, R.C.M. 1921; re-en. Sec. 4722, R.C.M. 1935; Sec. 16-2306, R.C.M. 1947; (2)En. Sec. 11, Ch. 188, L. 1931; re-en. Sec. 4630.11, R.C.M. 1935; Sec. 16-2025, R.C.M. 1947; R.C.M. 1947, 16-2025(part), 16-2306(part).

7-7-2233. En. Sec. 12, Ch. 188, L. 1931; re-en. Sec. 4630.12, R.C.M. 1935; amd. Sec. 1, Ch. 138, L. 1939; amd. Sec. 18, Ch. 64, L. 1959; amd. Sec. 14, Ch. 158, L. 1971; R.C.M. 1947, 16-2026(part).

7-7-2234. En. Sec. 12, Ch. 188, L. 1931; re-en. Sec. 4630.12, R.C.M. 1935; amd. Sec. 1, Ch. 138, L. 1939; amd. Sec. 18, Ch. 64, L. 1959; amd. Sec. 14, Ch. 158, L. 1971; R.C.M. 1947, 16-2026(part).

7-7-2235. (1)En. Sec. 1, p. 13, L. 1901; re-en. Sec. 2938, Rev. C. 1907; re-en. Sec. 4722, R.C.M. 1921; re-en. Sec. 4722, R.C.M. 1935; Sec. 16-2306, R.C.M. 1947; (2), (3)En. Sec. 11, Ch. 188, L. 1931; re-en. Sec. 4630.11, R.C.M. 1935; Sec. 16-2025, R.C.M. 1947; R.C.M. 1947, 16-2025(part), 16-2306(part).

7-7-2236. En. Sec. 14, Ch. 188, L. 1931; re-en. Sec. 4630.14, R.C.M. 1935; amd. Sec. 1, Ch. 210, L. 1961; R.C.M. 1947, 16-2028(part).

7-7-2237. Percentage of electors required to authorize bond issue. Whenever the question of issuing county bonds for any purpose is submitted to the registered electors of a county at either a general election or a special election held in conjunction with a regular or primary election, the determination of the approval or rejection of the bond proposition is made in the following manner:

(1) determine the total number of electors who were qualified to vote in the bond election;

(2) determine the total number of qualified electors who voted in the bond election from the tally sheet or sheets for the election;

(3) calculate the percentage of qualified electors voting at the bond election by dividing the number determined in subsection (2) by the number determined in subsection (1); and

(4) when the calculated percentage in subsection (3) is 40% or more, the bond proposition is considered approved and adopted if a majority of the votes cast were in favor of the proposition, otherwise it is considered rejected; or

(5) when the calculated percentage in subsection (3) is more than 30% but less than 40%, the bond proposition is considered approved and adopted if 60% or more of the votes cast were in favor of the proposition, otherwise it is considered rejected; or

(6) when the calculated percentage in subsection (3) is 30% or less, the bond proposition is considered rejected.

History: **En. Sec. 13, Ch. 188, L. 1931; re-en. Sec. 4630.13, R.C.M. 1935; R.C.M. 1947, 16-2027; amd. Sec. 314, Ch. 571, L. 1979; amd. Sec. 1, Ch. 336, L. 1989; amd. Sec. 32, Ch. 387, L. 1995.**

Compiler's Comments

1995 Amendment: Chapter 387 in (1) inserted "held in conjunction with a regular or primary election"; and made minor changes in style.

7-7-2238. Resolution to sell bonds. (1) If a sufficient percentage of the qualified electors entitled to vote at an election voted on the question and a sufficient percentage of votes were cast in favor of issuing bonds as provided in 7-7-2237, the board of county commissioners shall adopt a resolution calling for the sale of the bonds.

(2) The resolution calling for the sale of the bonds must state:

(a) the purpose for which the bonds are to be issued;

(b) the amount of the bonds to be issued;

(c) the minimum purchase price of the bonds;

(d) the date that the bonds will bear;

(e) the period of time through which the bonds are payable;

(f) the optional redemption provisions, if any; and

(g) a form of notice of the sale of the bonds.

(3) The resolution must, except in a bond issue of citizen bonds, fix the denomination of serial bonds in case it is found advantageous to issue bonds in that form. The board may in its discretion provide that the bonds may be issued and sold in two or more series or installments.

(4) The board of county commissioners may fix the minimum price for the bonds in an amount less than the principal amount of the bonds, which may not be less than 97% of the principal amount, if the board determines that a sale at that price is in the best interests of the county.

History: **En. Sec. 14, Ch. 188, L. 1931; re-en. Sec. 4630.14, R.C.M. 1935; amd. Sec. 1, Ch. 210, L. 1961; R.C.M. 1947, 16-2028(part); amd. Sec. 2, Ch. 336, L. 1989; amd. Sec. 7, Ch. 559, L. 1993; amd. Sec. 4, Ch. 423, L. 1995.**

Compiler's Comments

1995 Amendment: Chapter 423 at end of (1) substituted "adopt a resolution calling for the sale" for "at a regular or special meeting held within 30 days after the election, pass and adopt a resolution providing for the issuance"; in (2), after "resolution", inserted "calling for the sale of the bonds" and at end substituted "state" for "recite"; deleted former (2)(c) that read: "(c) the maximum rate of interest the bonds may bear"; inserted (2)(c) concerning minimum purchase price; in (2)(f), after "optional", inserted "redemption"; inserted (2)(g) concerning form of notice; in (3) deleted former first sentence that read: "The resolution must provide for the manner of the execution of the bonds" and in first sentence, after "citizen bonds", deleted "preference must be given to amortization bonds, but it must"; substituted (4) concerning minimum price for the bonds for former text that read: "The resolution must adopt a form of notice of the sale of the bonds"; and made minor changes in style. Amendment effective April 13, 1995.

Applicability: Section 53, Ch. 423, L. 1995, provided: "[This act] applies to bonds issued under the provisions of [this act] after [the effective date of this act]." Effective April 13, 1995.

7-7-2239. Rescission of resolution authorizing bond issue. If none of said bonds have been sold and issued within 3 years from the date of the bonding election and no vested rights have accrued thereunder, the board of county commissioners may rescind the authority to sell and issue such bonds by the passage and adoption of a resolution wherein is recited the reason for such rescission of authority.

History: En. Sec. 14, Ch. 188, L. 1931; re-en. Sec. 4630.14, R.C.M. 1935; amd. Sec. 1, Ch. 210, L. 1961; R.C.M. 1947, 16-2028(part).

7-7-2240 through 7-7-2250 reserved.

7-7-2251. Form of notice of sale of bonds. (1) The notice of sale must state the purpose or purposes for which the bonds are to be issued and the amount proposed to be issued for each purpose and must be substantially in the following form:

NOTICE OF SALE OF COUNTY BONDS

Notice is hereby given by the board of county commissioners of.... County, state of Montana, that the board will on the.... day of ...., ..., at the hour of ....m., at the office of the board in the courthouse in the (town or city) of.... in the said county, sell to the highest and best bidder for cash general obligation bonds of the county in the principal amount of.... dollars ($....) for the purpose of .....

The bonds will be issued and sold in the aggregate principal amount of .... dollars ($....) and will become payable according to the maturity schedule set forth below (set forth maturity schedule adopted by the board of county commissioners). (If the bonds are to be issued as amortization bonds, indicate that here.)

The bonds will bear an original issue date of ...., ..., will pay interest commencing on the .... day of.... (month), ..., will be payable semiannually on the .... day of .... (month) and .... (month) in each year thereafter, and will be redeemable in full (here insert the optional provisions, if any, to be recited in the bonds).

The bonds will be sold for not less than $___, with accrued interest on the principal amount of the bonds to date of delivery, and all bidders shall state the lowest rate or rates of interest at which they will purchase the bonds at the purchase price specified for the bonds. (An interest rate may not exceed ____% a year.) The board reserves the right to reject any and all bids and to sell the bonds at private sale.

All bids must be accompanied by (insert appropriate bid security as permitted by 18-1-202) in the sum of .... dollars ($....), payable to the order of the clerk, which will be forfeited by the successful bidder in the event that the bidder fails or refuses to complete the purchase of the bonds in accordance with the terms of the bid.

All bids must be addressed to the board of county commissioners and delivered to the county clerk.

ATTEST:
....
(Presiding officer, Board of County Commissioners)
of .... County, Montana

....
(Clerk of the Board of County Commissioners)
of .... County, Montana
Address ...., Montana

(2) The form of notice required under this section may be modified to accommodate changes necessary to issue citizen bonds pursuant to 7-7-2212 through 7-7-2215.

History: **En. Sec. 15, Ch. 188, L. 1931; re-en. Sec. 4630.15, R.C.M. 1935; amd. Sec. 100, Ch. 326, L. 1974; R.C.M. 1947, 16-2029; amd. Sec. 1, Ch. 500, L. 1981; amd. Sec. 1, Ch. 11, L. 1983; amd. Sec. 2, Ch. 631, L. 1983; amd. Sec. 8, Ch. 559, L. 1993; amd. Sec. 5, Ch. 423, L. 1995.**

Compiler's Comments

1995 Amendment: Chapter 423 in form of notice, in first paragraph near end, substituted "general obligation bonds" for "either amortization or serial bonds"; deleted former second and third paragraphs that read: "Amortization bonds will be the first choice and serial bonds will be the second choice of the board.

If amortization bonds are sold and issued, the entire issue may be put into one single bond or divided into several bonds, as the board may determine at the time of sale, both principal and interest to be payable in semiannual installments during a period of .... years from the date of issue"; in second paragraph, before "amount", inserted "aggregate principal" and at end inserted parenthetical concerning amortization bonds; in third paragraph, near beginning after "bonds", deleted "whether amortization or serial bonds", after "bear" inserted "an original issue", and after "interest" deleted "at a rate not exceeding ....% per annum"; in fourth paragraph, after "less than", deleted "their par value", after "interest" inserted "on the principal amount of the bonds", after "bonds at" substituted "the purchase price specified for the bonds" for "par", and inserted parenthetical concerning interest rate; in fifth paragraph, after "bids", deleted "other than by or on behalf of the board of investments of the state of Montana" and substituted parenthetical concerning bid security for "a certified check"; and made minor changes in style. Amendment effective April 13, 1995.

Applicability: Section 53, Ch. 423, L. 1995, provided: "[This act] applies to bonds issued under the provisions of [this act] after [the effective date of this act]." Effective April 13, 1995.

Cross-References

Amortization bonds preferred over serial bonds, 7-7-2209.

7-7-2252. Publication of notice of sale of bonds. The board of county commissioners shall publish notice of the bond sale in the official newspaper of the county as provided in 17-5-106. The board may in its discretion publish the notice or a summary of the notice in any financial newspapers published in the city of New York or Chicago.

History: **En. Sec. 16, Ch. 188, L. 1931; re-en. Sec. 4630.16, R.C.M. 1935; R.C.M. 1947, 16-2030; amd. Sec. 2, Ch. 173, L. 1987; amd. Sec. 6, Ch. 423, L. 1995.**

Compiler's Comments

1995 Amendment: Chapter 423 in second sentence, after "notice", inserted "or a summary of the notice"; and made minor changes in style. Amendment effective April 13, 1995.

Applicability: Section 53, Ch. 423, L. 1995, provided: "[This act] applies to bonds issued under the provisions of [this act] after [the effective date of this act]." Effective April 13, 1995.

7-7-2253. Repealed. Sec. 5, Ch. 6, L. 1993.

History: **En. Sec. 17, Ch. 188, L. 1931; re-en. Sec. 4630.17, R.C.M. 1935; amd. Sec. 3, Ch. 326, L. 1974; R.C.M. 1947, 16-2031.**

7-7-2254. Procedure for sale of bonds. (1) The board of county commissioners shall meet at the time and place fixed in the notice to consider bids for the bonds.

(2) The bonds may not be sold at less than the minimum bid specified for their sale with accrued interest to date of delivery, and each bidder shall specify the rate of interest and the purchase price at which the bidder will purchase the bonds. The board shall accept the bid that it judges most advantageous to the county. The board may reject any bids and sell the bonds at private sale if the board considers it in the best interests of the county.

(3) Consultant fees and attorney fees may be paid to any person or corporation for assisting in the proceedings, preparation of the bonds, or negotiating the sale of the bonds.

History: **En. Sec. 18, Ch. 188, L. 1931; re-en. Sec. 4630.18, R.C.M. 1935; amd. Sec. 9, Ch. 234, L. 1971; R.C.M. 1947, 16-2032; amd. Sec. 3, Ch. 631, L. 1983; amd. Sec. 7, Ch. 423, L. 1995.**

Compiler's Comments

1995 Amendment: Chapter 423 in (2), in first sentence after "less than", substituted "the minimum bid specified for their sale" for "par", after "specify" deleted "the form of bonds to be issued, whether amortization or serial", and after "interest" inserted "and the purchase price", deleted former second and third sentences that read: "A bid for amortization bonds shall have preference over a bid for serial bonds, all other things being equal. In determining the kind of bonds to be issued, the board shall take into consideration not only the rate of interest demanded on each kind but also all other known elements affecting the interests of the county", and at end of last sentence deleted "provided, however, that such bonds shall not be sold at less than par with accrued interest to date of delivery"; and made minor changes in style. Amendment effective April 13, 1995.

Applicability: Section 53, Ch. 423, L. 1995, provided: "[This act] applies to bonds issued under the provisions of [this act] after [the effective date of this act]." Effective April 13, 1995.

7-7-2255. Form and execution of bonds. (1) At the time of the sale of the bonds or at a meeting held after the sale, the board of county commissioners shall adopt a resolution providing for the issuance of the bonds, prescribing the form of the bonds, whether amortization bonds or serial bonds, and providing the manner of execution of the bonds.

(2) Each county bond and each coupon attached to the bond must be signed by or bear the facsimile signatures of the presiding officer of the board of county commissioners and the county treasurer and must be attested by the county clerk, provided that one signature of a county official or the bond registrar must be a manual signature. Each bond may have the county seal or its facsimile imprinted on the bond.

History: **En. Sec. 19, Ch. 188, L. 1931; re-en. Sec. 4630.19, R.C.M. 1935; amd. Sec. 8, Ch. 260, L. 1959; R.C.M. 1947, 16-2033; amd. Sec. 8, Ch. 423, L. 1995.**

Compiler's Comments

1995 Amendment: Chapter 423 in (1), after "commissioners shall", inserted "adopt a resolution providing for the issuance of the bonds" and at end substituted "providing the manner of execution of the bonds" for "of the coupons to be attached thereto"; in (2), in first sentence after "signed by", inserted "or bear the facsimile signatures of" and at end inserted proviso concerning manual signature and at end of second sentence substituted "or its facsimile imprinted on the bond" for "affixed thereto"; and made minor changes in style. Amendment effective April 13, 1995.

Applicability: Section 53, Ch. 423, L. 1995, provided: "[This act] applies to bonds issued under the provisions of [this act] after [the effective date of this act]." Effective April 13, 1995.

7-7-2256. Printing of bonds. (1) Except as provided in subsection (2), the county clerk, under the direction of the board, shall have the bonds printed or lithographed at the expense of the county at lowest commercial rates. The bonds may be typewritten with the purchaser's consent.

(2) A purchaser of the bonds may furnish the bonds to the county for execution if the execution is done at the purchaser's own expense and without expense to the county.

History: **En. Sec. 20, Ch. 188, L. 1931; re-en. Sec. 4630.20, R.C.M. 1935; R.C.M. 1947, 16-2034; amd. Sec. 9, Ch. 423, L. 1995.**

Compiler's Comments

1995 Amendment: Chapter 423 in (1), in first sentence after "bonds", deleted "with coupons attached thereto" and inserted second sentence concerning typewritten bonds; and made minor changes in style. Amendment effective April 13, 1995.

Applicability: Section 53, Ch. 423, L. 1995, provided: "[This act] applies to bonds issued under the provisions of [this act] after [the effective date of this act].” Effective April 13, 1995.

7-7-2257. Registration of bonds. (1) When executed by the officers of the county, the bonds must be registered by the county treasurer before being delivered to the purchaser.

(2) The registration must show:

(a) the date of issue, the maturities of the bonds subject to early redemption and the redemption dates, and the date when the bonds become due; and

(b) the amount of all payments of both principal and interest required on each bond, with the dates when the payments must be paid.

History: En. Sec. 21, Ch. 188, L. 1931; re-en. Sec. 4630.21, R.C.M. 1935; R.C.M. 1947, 16-2035(part); amd. Sec. 10, Ch. 423, L. 1995.

Compiler's Comments

1995 Amendment: Chapter 423 in (1), after “treasurer”, deleted “in a book provided for that purpose”; deleted former (2)(a) that read: “(a) the number and amount of each bond”; in (2)(a) substituted “the maturities of the bonds subject to early redemption and the redemption dates” for “date redeemable”; deleted (2)(d) that read: “(d) the name and address of the purchaser”; and made minor changes in style. Amendment effective April 13, 1995.

Applicability: Section 53, Ch. 423, L. 1995, provided: “[This act] applies to bonds issued under the provisions of [this act] after [the effective date of this act].” Effective April 13, 1995.

7-7-2258. Copy of bond to be kept by county treasurer. The county clerk shall also deliver to the county treasurer an unsigned and canceled printed copy of a bond of each issue, as so issued and registered, to be preserved in his office.

History: En. Sec. 21, Ch. 188, L. 1931; re-en. Sec. 4630.21, R.C.M. 1935; R.C.M. 1947, 16-2035(part).

7-7-2259. Delivery of bonds. The county treasurer shall deliver the bonds to the purchaser upon receiving full payment for the bonds.

History: En. Sec. 22, Ch. 188, L. 1931; re-en. Sec. 4630.22, R.C.M. 1935; amd. Sec. 4, Ch. 326, L. 1974; R.C.M. 1947, 16-2036(part); amd. Sec. 5, Ch. 581, L. 1987; amd. Sec. 11, Ch. 423, L. 1995.

Compiler's Comments

1995 Amendment: Chapter 423 substituted current text concerning delivery to purchasers for former text that read: “(1) If the board of investments is the purchaser of the bonds, the county treasurer shall forward the registered bonds to the department of commerce. The department shall deliver them to the state treasurer, and payment therefor shall be made in the manner provided by law.

(2) If the bonds are purchased by other investors, the county treasurer shall deliver the bonds to the purchaser upon receiving full payment therefor.” Amendment effective April 13, 1995.

Applicability: Section 53, Ch. 423, L. 1995, provided: “[This act] applies to bonds issued under the provisions of [this act] after [the effective date of this act].” Effective April 13, 1995.

7-7-2260. Disposition of sale proceeds. All money arising from the sale of the bonds shall be paid to the county treasurer and shall be immediately available for the purpose for which the bonds were issued and for no other purpose.

History: En. Sec. 22, Ch. 188, L. 1931; re-en. Sec. 4630.22, R.C.M. 1935; amd. Sec. 4, Ch. 326, L. 1974; R.C.M. 1947, 16-2036(part).

7-7-2261. Maintenance of accounts for bond issues. (1) The county treasurer of each county shall keep in the county's books a special and separate sinking fund account for each series or issue of outstanding bonds, including citizen bonds as provided in 7-7-2212 through 7-7-2215, issued by the county. Each fund must at all times show the exact condition of the bonds.

(2) All taxes collected for interest and principal on county bonds must be placed to the credit of the sinking fund for which the taxes were levied.

(3) Interest from investment of money in a sinking fund account may, in the discretion of the board of county commissioners, be used as it accrues to fulfill or complete the specific project for which the bonds were issued.

(4) The sinking fund must be administered as provided in 7-7-123, 7-7-124, and 7-7-2270.

History: En. Sec. 27, Ch. 188, L. 1931; re-en. Sec. 4630.27, R.C.M. 1935; amd. Sec. 1, Ch. 103, L. 1973; R.C.M. 1947, 16-2041(part); amd. Sec. 3, Ch. 256, L. 1979; amd. Sec. 9, Ch. 559, L. 1993.

7-7-2262. Payment of principal and interest. The county treasurer shall pay from the proper sinking and interest fund the interest and principal of each issue or series of outstanding bonds, as the interest and principal become due and at the place where the bonds are payable, upon presentation and surrender of the coupon or bond to be paid.

History: En. Sec. 28, Ch. 188, L. 1931; re-en. Sec. 4630.28, R.C.M. 1935; R.C.M. 1947, 16-2042(part); amd. Sec. 12, Ch. 423, L. 1995.

Compiler's Comments

1995 Amendment: Chapter 423 deleted former last sentence that read: "If the bonds are held by the state of Montana, then all such payments shall be made at the office of the state treasurer, who shall cancel the coupons or bonds and return the same to the county treasurer, together with his receipt"; and made minor changes in style. Amendment effective April 13, 1995.

Applicability: Section 53, Ch. 423, L. 1995, provided: "[This act] applies to bonds issued under the provisions of [this act] after [the effective date of this act]." Effective April 13, 1995.

7-7-2263. Interest on late payments of principal and interest on bonds held by state. Any and all installments of interest or principal on bonds held by the state and not promptly paid at the office of the state treasurer when due shall draw interest at the rate of 6% per annum from the date due until actually paid, irrespective of the rate of interest on the bonds themselves.

History: En. Sec. 28, Ch. 188, L. 1931; re-en. Sec. 4630.28, R.C.M. 1935; R.C.M. 1947, 16-2042(part).

7-7-2264. Statement as to amount of principal and interest due and payable on bonds. (1) Whenever any county has any issue or series of bonds outstanding and there are not sufficient funds on hand available for the payment of the full amount of the interest and principal thereof, the county treasurer of such county shall, between the first and fifth days of August in each year while such bonds or any thereof remain outstanding and unpaid, make out and deliver to the board of county commissioners of such county a statement.

(2) The statement required by subsection (1) shall show the amount required to be raised by tax levy during the then-current fiscal year for payment of interest and principal becoming due and payable during such fiscal year or within 90 days thereafter on each issue or series of bonds outstanding. If no part of the principal of any such issue or series of bonds will become due and payable within such time, then such statement shall show the amount required to be raised by tax levy during such year for payment of interest becoming due during such time and to place the proper amount in the sinking fund for the

payment of the principal of such bonds when they become due, as provided in 7-7-2265.

History: En. Sec. 24, Ch. 188, L. 1931; re-en. Sec. 4630.24, R.C.M. 1935; R.C.M. 1947, 16-2038.

7-7-2265. Tax levy for payment of bonds. (1) The board of county commissioners, at the time of making the levy of taxes for county purposes, must levy a separate and special tax upon all taxable property in the county for the payment of interest on and principal of each series or issue of bonds outstanding. The tax levy for any one series or issue of bonds must be entirely separate and distinct from the levy for any other series or issue of bonds.

(2) Except as provided in subsection (3), the levy made for the purpose of paying interest on and principal of each series or issue of bonds must be high enough to raise an amount sufficient to pay all interest on and so much of the principal, if any, of the bonds as will become due and payable during the then-current fiscal year or within 90 days after the fiscal year, as shown by the treasurer's statement provided by 7-7-2264. If no part of the principal of the bonds become due and payable within that time, then the tax levy must be high enough to:

(a) raise an amount sufficient to pay all interest that will become due and payable during the current fiscal year or within 90 days after the fiscal year; and

(b) place in the sinking fund for the issue or series of bonds, for the payment of the principal when it becomes due, an amount not less than a sum produced by dividing the whole amount for which the series or issue of bonds was originally issued by the number of years for which the series or issue was originally issued to run.

(3) The annual levies made for the purpose of paying off bonds that do not provide for periodic interest payments but, rather, are sold at a discount from their face value, as provided in 7-7-2212 through 7-7-2215, must be actuarially sufficient so that at the time for redemption, there is an amount in the sinking fund sufficient to redeem the bonds.

History: En. Sec. 25, Ch. 188, L. 1931; re-en. Sec. 4630.25, R.C.M. 1935; R.C.M. 1947, 16-2039; amd. Sec. 10, Ch. 559, L. 1993.

7-7-2266. Procedure in case of insufficient tax levy — individual liability of county commissioners. (1) If the board of county commissioners of any county shall fail, neglect, or refuse in any year to make a levy sufficient to pay the interest on and principal of any issue or series of bonds as required by the provisions of 7-7-2265, the holder of any bond of such issue or series or any taxpayer paying taxes on property situated in such county may apply to the district court of the county issuing such bonds for a writ of mandate to compel the board of such county to make a proper and sufficient levy for such purposes.

(2) If, upon the hearing of such application, it shall appear to the satisfaction of the court that the board has failed, neglected, or refused to make any levy whatever for such purposes or has made a levy but that the same is insufficient to raise the amount required to be raised for such purposes under the provisions of 7-7-2265, the court shall determine the amount of the deficiency and shall issue a writ of mandate directed to and requiring such

board, at the next meeting thereof for the purpose of making and fixing county levies, to raise the amount of such deficiency. This levy shall be in addition to the levy required to be made for the then-current fiscal year.

(3) Any costs which may be allowed or awarded the petitioner in any such proceeding shall be paid by the members of the board and shall not be a charge against such county.

History: En. Sec. 26, Ch. 188, L. 1931; re-en. Sec. 4630.26, R.C.M. 1935; R.C.M. 1947, 16-2040.

Cross-References

Writ of Mandate, Title 27, ch. 26.

7-7-2267. Repealed. Sec. 52, Ch. 423, L. 1995.

History: En. Sec. 29, Ch. 188, L. 1931; amd. Sec. 1, Ch. 152, L. 1933; re-en. Sec. 4630.29, R.C.M. 1935; amd. Sec. 1, Ch. 46, L. 1939; amd. Sec. 100, Ch. 326, L. 1974; R.C.M. 1947, 16-2043(part).

7-7-2268. Redemption of bonds. (1) Whenever there is available money in any sinking and interest fund over and above the amount required for payment of principal and interest becoming due on the next interest payment date and sufficient to pay and redeem one or more outstanding bonds, or principal installments in the case of amortization bonds, of the issue or series to which the sinking and interest fund belongs, which bonds are not yet due but are then redeemable or will become redeemable on or before the next interest payment date, the county treasurer shall apply the available money in redemption of as many of the bonds, or principal installments in the case of amortization bonds, as the available money will pay and redeem to a redemption date on or before the next interest payment date, as fixed by the county treasurer.

(2) The county treasurer shall give notice, by mail sent at least 30 days before the redemption date, to the holder of the bonds, if ownership of the bonds is registered or is otherwise known to the treasurer, to the registered owners at their addresses as they appear in the bond registration books, and to any bank or financial institution at which the bonds are payable that the bonds or principal installments will be paid and redeemed on that date. A defect in or failure to give notice may not affect the validity of the proceedings for the redemption of a bond or principal installment not affected by the defect or failure. If the ownership of the bonds is not registered, the county treasurer shall also publish in the official newspaper of the county or other newspaper designated in the resolution authorizing the issuance of the bonds once, not less than 30 days prior to the redemption date, a notice that the bonds or principal installments have been called for redemption and will be paid in full on the redemption date. If actual notice of the call has been received, the holder of a bond may waive published or mailed notice.

(3) If the bonds or principal installments are payable at a bank or financial institution, the county treasurer shall remit to the bank or financial institution, before the redemption date, an amount sufficient to pay and redeem the bonds or principal installments with interest accrued on the bonds or principal installments. If the bonds are not presented for payment and redemption on the redemption date, interest ceases on that date if the funds for payment and redemption have been deposited in a bank or financial institution.

History: En. Sec. 29, Ch. 188, L. 1931; amd. Sec. 1, Ch. 152, L. 1933; re-en. Sec. 4630.29, R.C.M. 1935; amd. Sec. 1, Ch. 46, L. 1939; amd. Sec. 100, Ch. 326, L. 1974; R.C.M. 1947, 16-2043(part); amd. Sec. 1, Ch. 453, L. 1993; amd. Sec. 13, Ch. 423, L. 1995.

Compiler's Comments

1995 Amendment: Chapter 423 in (2), near beginning of first sentence, inserted "by mail sent at least 30 days before the redemption date" and near end, after "payable", deleted "by mail sent at least 15 days before the redemption date", in second sentence, at end after "installment", inserted "not affected by the defect or failure", in third sentence, after "county", substituted "or other newspaper designated in the resolution authorizing the issuance of the bonds once, not less than 30 days prior to the redemption date" for "once a week for 2 consecutive weeks immediately preceding the interest payment date", and in fourth sentence, after "been", substituted "received" for "given through a different means for its redemption"; at end of (3) inserted "if the funds for payment and redemption have been deposited in a bank or financial institution"; and made minor changes in style. Amendment effective April 13, 1995.

Applicability: Section 53, Ch. 423, L. 1995, provided: "[This act] applies to bonds issued under the provisions of [this act] after [the effective date of this act]." Effective April 13, 1995.

7-7-2269. Order of redemption of bonds. All bonds or principal installments of amortization bonds to be redeemed under the provisions of 7-7-2268 may be paid and redeemed in the order that the county treasurer selects, consistent with the provisions of the resolution authorizing the issuance of the bonds.

History: En. Sec. 29, Ch. 188, L. 1931; amd. Sec. 1, Ch. 152, L. 1933; re-en. Sec. 4630.29, R.C.M. 1935; amd. Sec. 1, Ch. 46, L. 1939; amd. Sec. 100, Ch. 326, L. 1974; R.C.M. 1947, 16-2043(part); amd. Sec. 2, Ch. 453, L. 1993; amd. Sec. 14, Ch. 423, L. 1995.

Compiler's Comments

1995 Amendment: Chapter 423 deleted reference to 7-7-2267; and made minor changes in style. Amendment effective April 13, 1995.

Applicability: Section 53, Ch. 423, L. 1995, provided: "[This act] applies to bonds issued under the provisions of [this act] after [the effective date of this act]." Effective April 13, 1995.

7-7-2270. Authority to purchase outstanding bonds. Whenever there is available money in any sinking fund over and above the amount required for payment of the principal and interest becoming due on the next interest payment date and sufficient to pay and redeem one or more outstanding bonds of the issue or series to which the sinking fund belongs and whenever such bonds are not held by the state of Montana and are not subject to redemption, the county treasurer, at the direction of the board of county commissioners, shall purchase such bonds if this can be done at not more than par and accrued interest or at such reasonable premium as the board may feel justified in paying, not in any case exceeding 5%.

History: En. Sec. 30, Ch. 188, L. 1931; re-en. Sec. 4630.30, R.C.M. 1935; amd. Sec. 2, Ch. 46, L. 1939; amd. Sec. 1, Ch. 12, L. 1963; R.C.M. 1947, 16-2044(part); amd. Sec. 4, Ch. 256, L. 1979.

7-7-2271. Repealed. Sec. 7, Ch. 256, L. 1979.

History: En. Sec. 30, Ch. 188, L. 1931; re-en. Sec. 4630.30, R.C.M. 1935; amd. Sec. 2, Ch. 46, L. 1939; amd. Sec. 1, Ch. 12, L. 1963; R.C.M. 1947, 16-2044(part).

7-7-2272. Cancellation of bonds and coupons. (1) (a) All bonds and interest coupons paid by the county treasurer from time to time shall be canceled by him, and after such cancellation, he shall deliver the same to the county clerk, with a report showing the numbers of such bonds and the amounts paid as principal and interest thereon. The county treasurer shall enter on the record of the registration of such bonds the date of the payment of the same and the several coupons attached thereto.

(b) The county clerk shall exhibit such bonds and coupons, with such report, to the board of county commissioners at the next regular meeting thereof.

(2) (a) When any bonds have been or are purchased with any sinking and interest fund money under the provisions of 7-7-2270, such bonds, with attached interest coupons, if not then in the possession of the county treasurer, shall be immediately delivered to him. Such county treasurer shall at once endorse across the face of each such bond the word "Paid" and the date thereof and shall sign such endorsement; and such treasurer shall, without detaching the same, cancel each interest coupon attached to such bonds by endorsing across the face thereof the word "Canceled" and the date thereof and shall sign such endorsement. After making such endorsements on such bonds and coupons, the county treasurer shall enter on the record of registration thereof the date such bonds and coupons were so endorsed by him as being paid and canceled, with the numbers and amounts thereof and the dates when the same would have become due and payable if they had not been so purchased. The county treasurer shall then deliver such bonds, with the canceled coupons attached, to the county clerk, with a report showing the numbers thereof and amount paid on the purchase thereof.

(b) The county clerk shall exhibit such bonds, with attached coupons and report, to the board at its next regular session.

History: (1)En. Sec. 31, Ch. 188, L. 1931; re-en. Sec. 4630.31, R.C.M. 1935; Sec. 16-2045, R.C.M. 1947; (2)En. Sec. 30, Ch. 188, L. 1931; re-en. Sec. 4630.30, R.C.M. 1935; amd. Sec. 2, Ch. 46, L. 1939; amd. Sec. 1, Ch. 12, L. 1963; Sec. 16-2044, R.C.M. 1947; R.C.M. 1947, 16-2044(part), 16-2045(part).

7-7-2273. Cancellation of warrants and refunded general obligation bonds. (1) Whenever bonds are issued for the purpose of funding outstanding warrants or refunding outstanding bonds, the county treasurer shall, upon taking up such warrants or bonds, cancel the same, keep a record thereof, and deliver the same to the county clerk, with a report showing the numbers thereof and the amounts paid for principal and interest.

(2) The county clerk shall exhibit such warrants and bonds, with such report, to the board of county commissioners at the next regular meeting thereof.

History: En. Sec. 31, Ch. 188, L. 1931; re-en. Sec. 4630.31, R.C.M. 1935; R.C.M. 1947, 16-2045(part).

7-7-2274. Closing of accounts and transfer of money to other accounts. When all bonds of any series or issue, with the interest thereon, have been fully paid or called in for payment and there remains in the sinking and interest fund for such series or issue any amount not required for the payment of such bonds and interest or not used as provided in 7-7-2261, such excess amount and all amounts subsequently collected for such fund shall be transferred to the general fund of the county or to the sinking and interest fund of any other series or issue of bonds outstanding that the board of county commissioners may designate.

History: En. Sec. 27, Ch. 188, L. 1931; re-en. Sec. 4630.27, R.C.M. 1935; amd. Sec. 1, Ch. 103, L. 1973; R.C.M. 1947, 16-2041(part).

7-7-2275. Repealed. Sec. 52, Ch. 423, L. 1995.

History: En. Sec. 32, Ch. 188, L. 1931; re-en. Sec. 4630.32, R.C.M. 1935; amd. Sec. 24, Ch. 234, L. 1971; amd. Sec. 100, Ch. 326, L. 1974; R.C.M. 1947, 16-2046.

Part 23

County Refunding General Obligation Bonds

7-7-2301. Authority to issue refunding general obligation bonds. (1) The board of county commissioners of each county of the state may issue, negotiate, and sell coupon bonds on the credit of the county, as provided in part 22 and this part, for the purpose of refunding, paying, and redeeming optional, redeemable, or maturing bonds when:

(a) there are not sufficient funds available to pay the bonds or there is a reduction in debt service as a result of issuing refunding bonds pursuant to 7-7-2304; and

(b) it is considered in the best interests of the county to refund the bonds.

(2) (a) The board has the authority to negotiate with the holders of the bonds of the county for an agreement or agreements whereby the bondholders agree to accept less than the full amount of the bonds and the accrued unpaid interest on the bonds as full payment and satisfaction of the bonds, to enter into the agreement or agreements, and to issue refunding bonds for the amount agreed upon whenever:

(i) the total indebtedness of a county exceeds 5% of the value of the taxable property in the county; and

(ii) the board of county commissioners of the county determines that the county is unable to pay and discharge the indebtedness in full.

(b) These bonds may be issued in more than one series if the circumstances require, and each series may be either amortization bonds or serial bonds. The plan agreed upon between the board and the bondholders must be embodied in full in the resolution providing for the issue of the bonds.

History: En. Sec. 1, Ch. 188, L. 1931; re-en. Sec. 4630.1, R.C.M. 1935; amd. Sec. 1, Ch. 135, L. 1937; amd. Sec. 1, Ch. 136, L. 1963; amd. Sec. 12-102, Ch. 197, L. 1965; amd. Sec. 5, Ch. 100, L. 1973; R.C.M. 1947, 16-2008(part); amd. Sec. 15, Ch. 423, L. 1995.

Compiler's Comments

1995 Amendment: Chapter 423 in (1)(a), at end, inserted "or there is a reduction in debt service as a result of issuing refunding bonds pursuant to 7-7-2304"; and made minor changes in style. Amendment effective April 13, 1995.

Applicability: Section 53, Ch. 423, L. 1995, provided: "[This act] applies to bonds issued under the provisions of [this act] after [the effective date of this act]." Effective April 13, 1995.

7-7-2302. Applicability of certain other bond provisions. (1) The provisions of 7-7-2203 through 7-7-2207, 7-7-2209 through 7-7-2211, 7-7-2222, 7-7-2255 through 7-7-2266, 7-7-2268 through 7-7-2270, and 7-7-2272 through 7-7-2274 apply to refunding bonds issued under this part; however, the board of county commissioners may at its option sell bonds issued under this part at a private negotiated sale or at a public sale conducted pursuant to the provisions of 7-7-2251, 7-7-2252, and 7-7-2254.

(2) If a refunding bond issue refunds only a portion of an outstanding bond issue, the unrefunded portion of the outstanding bond issue and the refunding bond issue must be treated as a single bond issue for the purposes of 7-7-2211.

History: En. by Code Commissioner, 1979; amd. Sec. 1, Ch. 647, L. 1983; amd. Sec. 15, Ch. 370, L. 1987; amd. Sec. 1, Ch. 6, L. 1993; amd. Sec. 16, Ch. 423, L. 1995.

Compiler's Comments

1995 Amendment: Chapter 423 in (1) deleted reference to 7-7-2267; and inserted (2) concerning unrefunded portion of outstanding bond issue. Amendment effective April 13, 1995.

Applicability: Section 53, Ch. 423, L. 1995, provided: "[This act] applies to bonds issued under the provisions of [this act] after [the effective date of this act]." Effective April 13, 1995.

7-7-2303. Term of refunding general obligation bonds. (1) (a) The following limitations as to term shall apply to all bonds issued under 7-7-2301(1). Except as provided in subsection (1)(b), no bonds shall be issued for a longer term than 10 years.

(b) (i) If the unexpired term of the bonds to be refunded shall be more than 10 years, the refunding bonds may be issued for such unexpired term.

(ii) If such 10-year term will require an annual tax levy for payment of such refunding bonds exceeding 10 mills on all property subject to taxation in the county, the term may be so extended as to reduce the required annual levy to 10 mills; provided, however, that the term shall not under any circumstances exceed 20 years.

(2) Bonds issued for any of the purposes designated in 7-7-2301(2) shall not be for a longer term than will be required to repay the bonds with interest through a tax levy of 10 mills on all the property within the county subject to taxation, and the term shall not exceed 20 years.

(3) The length of the term required shall be estimated and calculated by the board of county commissioners, based upon the percentage of valuation of the property upon which taxes are levied and paid within such county as ascertained from the last completed assessment for state and county taxes, taking into account probable changes in the taxable valuation and losses in tax collections. Irrespective of any miscalculation by the county commissioners in fixing the term of the bonds, the county must from year to year make a sufficient tax levy to pay the interest and installments on principal on the bonds as the same fall due.

History: En. Sec. 4, Ch. 188, L. 1931; amd. Sec. 2, Ch. 115, L. 1933; re-en. Sec. 4630.4, R.C.M. 1935; amd. Sec. 3, Ch. 135, L. 1937; amd. Sec. 1, Ch. 33, L. 1943; amd. Sec. 6, Ch. 234, L. 1971; amd. Sec. 2, Ch. 284, L. 1973; R.C.M. 1947, 16-2011(part).

7-7-2304. Interest rate on refunding general obligation bonds. (1) Except as provided in subsection (2), refunding bonds may not be issued unless the refunding bonds bear interest at a rate of at least 1/2 of 1% less than the outstanding bonds that are to be refunded.

(2) Refunding bonds may bear interest in excess of the rate on the refunded bonds if the issuance of the refunding bonds, including the total costs of refunding the bonds, results in a reduction of total debt service cost to the county.

(3) Refunding bonds may be issued in a principal amount greater than the principal amount of the outstanding bonds if there is a reduction of total debt service cost to the county.

History: En. Sec. 6, Ch. 188, L. 1931; re-en. Sec. 4630.6, R.C.M. 1935; amd. Sec. 4, Ch. 135, L. 1937; amd. Sec. 2, Ch. 33, L. 1943; R.C.M. 1947, 16-2013(part); amd. Sec. 1, Ch. 54, L. 1989; amd. Sec. 17, Ch. 423, L. 1995.

Compiler's Comments

1995 Amendment: Chapter 423 inserted (3) concerning amount of refunding bonds; and made minor changes in style. Amendment effective April 13, 1995.

Applicability: Section 53, Ch. 423, L. 1995, provided: "[This act] applies to bonds issued under the provisions of [this act] after [the effective date of this act]." Effective April 13, 1995.

7-7-2305 through 7-7-2310 reserved.

7-7-2311. Issuance of refunding general obligation bonds without election. Bonds may be issued without submitting the same to an election if the bonds are issued for the purpose of:

(1) refunding, paying, and redeeming optional, redeemable, or maturing bonds as set forth in 7-7-2301(1); and

(2) refunding any bonds for which the holders have agreed to accept less than the full amount of principal and interest in full payment and satisfaction as set forth in 7-7-2301(2).

History: En. Sec. 6, Ch. 188, L. 1931; re-en. Sec. 4630.6, R.C.M. 1935; amd. Sec. 4, Ch. 135, L. 1937; amd. Sec. 2, Ch. 33, L. 1943; R.C.M. 1947, 16-2013(part).

7-7-2312. Disposition of proceeds of refunding bonds. Whenever bonds are issued for the purpose of funding outstanding warrants or refunding outstanding bonds, it shall be the duty of the county treasurer to apply the proceeds derived from the sale of such bonds to the payment of such warrants or bonds to be so funded or refunded.

History: En. Sec. 31, Ch. 188, L. 1931; re-en. Sec. 4630.31, R.C.M. 1935; R.C.M. 1947, 16-2045(part).

7-7-2313 through 7-7-2315 reserved.

7-7-2316. Advance refunding bonds. The board of county commissioners may issue refunding bonds pursuant to this section to refund outstanding bonds in advance of the date on which such bonds mature or are subject to redemption, provided the proceeds of the refunding bonds, less any accrued interest or premium received upon the sale thereof, are deposited with other funds appropriated to the payment of the outstanding bonds in escrow with a suitable banking institution in or out of the state. Funds so deposited shall be invested in securities which are general obligations of the United States or the principal and interest of which are guaranteed by the United States and which mature or are callable at the option of the holder on such dates and bear interest at such rates and payable on such dates as shall be required to provide funds sufficient, with any cash retained in the escrow account, to pay when due the interest to accrue on each refunded bond to its maturity or redemption date, if called for redemption, and to pay the principal thereof at maturity or upon such redemption date, and to pay any redemption premium. The escrow account shall be irrevocably appropriated to the payment of the principal of and interest and redemption premium, if any, on the refunded bonds. Funds to the credit of the sinking fund account for the payment of the refunded bonds and not required for the payment of principal of or interest thereon due prior to issuance of the refunding bonds may be appropriated by the county to the escrow account. The county may pay the reasonable costs and expenses of printing the refunding bonds and of establishing and maintaining the escrow account. Bonds refunded pursuant to this part are not to be considered outstanding for purposes of 7-7-2203 or any other debt limitation.

History: En. Sec. 7, Ch. 647, L. 1983.

Cross-References

Cities — advance refunding bonds, 7-7-4316.

Issuance of school refunding bonds without an election, 20-9-412.

Part 24

County Loans

7-7-2401. Authorization to borrow money. The board of county commissioners has jurisdiction and power, under such limitations and restrictions as are prescribed by law, to borrow money upon the credit of the county to meet current expenses if the county revenue is insufficient.

History: En. Subd. 26, Sec. 1, Ch. 100, L. 1931; re-en. Sec. 4465.25, R.C.M. 1935; R.C.M. 1947, 16-1028.

7-7-2402. Election required to borrow money — exceptions. (1) Except as provided in subsection (3), the board of county commissioners may not borrow money for any of the purposes mentioned in this title or for any single purpose in an amount exceeding $500,000 without:

(a) first having submitted the question of a loan to a vote of the electors of the county; and

(b) the approval of a majority of the electors of the county.

(2) If a majority of the votes cast are in favor of the loan, then the board may make the loan, issuing bonds or otherwise as may seem best for the interests of the county.

(3) It is not necessary to submit to the electors the question of borrowing money:

(a) to refund outstanding bonds; or

(b) for the purpose of enabling any county to liquidate its indebtedness to another county incident to the creation of a new county or the change of any county boundary lines.

History: (1), (3)En. Sec. 4270, Pol. C. 1895; re-en. Sec. 2933, Rev. C. 1907; amd. Sec. 1, Ch. 92, L. 1919; re-en. Sec. 4717, R.C.M. 1921; re-en. Sec. 4717, R.C.M. 1935; Sec. 16-2301, R.C.M. 1947; (2)En. Sec. 4274, Pol. C. 1895; re-en. Sec. 2937, Rev. C. 1907; re-en. Sec. 4721, R.C.M. 1921; re-en. Sec. 4721, R.C.M. 1935; Sec. 16-2305, R.C.M. 1947; R.C.M. 1947, 16-2301, 16-2305; amd. Sec. 10, Ch. 16, L. 1991.

7-7-2403. Determination of amount of loan. Whenever it is necessary to submit to a vote of the electors of the county the question of making a loan, the board must first determine the amount necessary to be raised.

History: En. Sec. 4271, Pol. C. 1895; re-en. Sec. 2934, Rev. C. 1907; re-en. Sec. 4718, R.C.M. 1921; re-en. Sec. 4718, R.C.M. 1935; R.C.M. 1947, 16-2302.

7-7-2404. Notice of election. Notice of the election, clearly stating the amount to be raised and the object of the loan, must be given in all respects in the manner prescribed by law in regard to the submission of questions to the electors of a locality under the general election law.

History: En. Sec. 4272, Pol. C. 1895; re-en. Sec. 2935, Rev. C. 1907; re-en. Sec. 4719, R.C.M. 1921; re-en. Sec. 4719, R.C.M. 1935; R.C.M. 1947, 16-2303(part).

7-7-2405. Form of ballots. There must be written or printed on the ballots the words "For the loan" and "Against the loan", and in voting the elector must vote for the proposition he prefers by making an X opposite the proposition.

History: **En. Sec. 4273, Pol. C. 1895; re-en. Sec. 2936, Rev. C. 1907; re-en. Sec. 4720, R.C.M. 1921; re-en. Sec. 4720, R.C.M. 1935; R.C.M. 1947, 16-2304.**

7-7-2406. Conduct of election and canvass of results. The election must be held and conducted and the returns must be made in all respects in the manner prescribed by law in regard to the submission of questions to the electors of a locality under the general election law.

History: **En. Sec. 4272, Pol. C. 1895; re-en. Sec. 2935, Rev. C. 1907; re-en. Sec. 4719, R.C.M. 1921; re-en. Sec. 4719, R.C.M. 1935; R.C.M. 1947, 16-2303(part).**

7-7-2407. Restriction on use of loan proceeds. All money borrowed by or on behalf of any county must be used only for the purpose specified by law.

History: **En. Sec. 4195, Pol. C. 1895; re-en. Sec. 2875, Rev. C. 1907; re-en. Sec. 4446, R.C.M. 1921; Cal. Pol. C. Sec. 4005; re-en. Sec. 4446, R.C.M. 1935; R.C.M. 1947, 16-806; amd. Sec. 18, Ch. 423, L. 1995.**

Compiler's Comments

1995 Amendment: Chapter 423 at end deleted "authorizing the loan"; and made minor changes in style. Amendment effective April 13, 1995.

Applicability: Section 53, Ch. 423, L. 1995, provided: "[This act] applies to bonds issued under the provisions of [this act] after [the effective date of this act]." Effective April 13, 1995.

Part 25
County Revenue Bonds

7-7-2501. Authority to issue revenue bonds — refunding revenue bonds. (1) A county may issue county revenue bonds in the same manner and with the same effect as provided in chapter 7, part 44, of this title for issuance of municipal revenue bonds. County revenue bonds may be issued to finance any project or activity enumerated in chapter 16, part 21, of this title or in Title 75, chapter 10, part 1. Revenue from the project for which the bonds are issued is the only revenue upon which a lien under the provisions of 7-7-4431 may apply. A lien may not attach to other revenue or other property within the county.

(2) A county may refund revenue bonds issued under the authority provided in subsection (1) by the method provided in either part 45 or part 46 of chapter 7.

(3) In construing, for purposes of this section, the provisions of parts 44, 45, or 46 of chapter 7, "municipal" is considered to refer to the county and "governing body" is considered to refer to the board of county commissioners whenever the board of county commissioners is acting pursuant to subsection (1).

History: **En. Sec. 1, Ch. 472, L. 1983; amd. Sec. 4, Ch. 770, L. 1991; amd. Sec. 51, Ch. 423, L. 1995.**

Compiler's Comments

1995 Amendment: Chapter 423 in (1), in second sentence, deleted reference to Title 7, chapter 34, part 22 or 23; and made minor changes in style. Amendment effective April 13, 1995.

Applicability: Section 53, Ch. 423, L. 1995, provided: "[This act] applies to bonds issued under the provisions of [this act] after [the effective date of this act]." Effective April 13, 1995.

Parts 26 through 40 reserved

Part 41

General Provisions Related to Municipalities

7-7-4101. Purposes for which indebtedness may be incurred. The city or town council has power to contract an indebtedness on behalf of a city or town, upon the credit thereof, by borrowing money or issuing bonds for the following purposes:

(1) erection of public buildings;

(2) construction of sewers, sewage treatment and disposal plants, waterworks, reservoirs, reservoir sites, and lighting plants;

(3) supplying the city or town with water by contract and the construction or purchase of canals or ditches and water rights for supplying the city or town with water;

(4) construction of bridges, docks, wharves, breakwaters, piers, jetties, and moles;

(5) to acquire, open, and/or widen any street and to improve the same by constructing, reconstructing, and repairing pavement, gutters, curbs, and vehicle parking strips and to pay all or any portion of the cost thereof;

(6) the purchase of fire apparatus and street and other equipment;

(7) building, purchasing, constructing, and maintaining devices intended to protect the safety of the public from open ditches carrying irrigation or other water;

(8) the funding of outstanding warrants and maturing bonds; and

(9) the repayment of tax protests lost by the city, town, or other municipal corporation.

History: En. Subd. 64, Sec. 5039, R.C.M. 1921; amd. Sec. 1, Ch. 115, L. 1925; amd. Sec. 1, Ch. 20, L. 1927; re-en. Sec. 5039.63, R.C.M. 1935; amd. Sec. 1, Ch. 35, L. 1947; amd. Sec. 1, Ch. 152, L. 1953; amd. Sec. 1, Ch. 34, L. 1955; amd. Sec. 1, Ch. 38, L. 1959; amd. Sec. 1, Ch. 158, L. 1963; amd. Sec. 1, Ch. 100, L. 1973; R.C.M. 1947, 11-966(part); amd. Sec. 6, Ch. 213, L. 1989.

7-7-4102. Investment of certain bond proceeds. (1) Whenever the city or town has under its control any money realized from the sale of bonds, for which there is no immediate demand and which in the judgment of the city or town council it would be advantageous to invest in any time or savings deposits, United States certificates of indebtedness, United States treasury notes, or United States treasury bonds having a maturity date of 1 year or less, the city or town council is authorized in their discretion to direct the city treasurer or town clerk to make such investments.

(2) Interest earned from such investments, including interest on the sale of bonds accrued in the period between the date of issue and the time of purchase, shall be credited to the bond sinking fund of the city or town.

History: En. Sec. 1, Ch. 31, L. 1961; amd. Sec. 1, Ch. 10, L. 1963; amd. Sec. 2, Ch. 268, L. 1969; R.C.M. 1947, 11-1310(2).

7-7-4103. General qualifications to vote on questions of municipal indebtedness. (1) Registered electors of the city, town, or other municipal corporation may vote upon any proposal to create or increase any indebtedness of the city, town, or other municipal corporation required by law to be submitted to a vote of the electors.

(2) No elector, otherwise qualified, may be denied the right to vote because the polling place for a general election for the precinct wherein he resides and is entitled to vote lies within another city, town, or other municipal corporation.

History: **En. Sec. 1, Ch. 98, L. 1923; amd. Sec. 1, Ch. 47, L. 1929; re-en. Sec. 5199.1, R.C.M. 1935; amd. Sec. 1, Ch. 126, L. 1959; R.C.M. 1947, 84-4711(part); amd. Sec. 2, Ch. 212, L. 1979.**

7-7-4104 through 7-7-4110 reserved.

7-7-4111. Renumbered 7-7-132 by Code Commissioner, 1995.

7-7-4112. Renumbered 7-7-133 by Code Commissioner, 1995.

7-7-4113. Renumbered 7-7-134 by Code Commissioner, 1995.

Part 42

Municipal General Obligation Bonds

7-7-4201. Limitation on amount of bonded indebtedness. (1) Except as otherwise provided, a city or town may not issue bonds or incur other indebtedness for any purpose in an amount that with all outstanding and unpaid indebtedness will exceed 28% of the taxable value of the property in the city or town subject to taxation, to be ascertained by the last assessment for state and county taxes, plus, for bonds to be issued or other indebtedness to be incurred during fiscal year 1997, an additional 11% of the taxable value of class eight property within the city or town for tax year 1995, for bonds to be issued or other indebtedness to be incurred during fiscal year 1998, an additional 22% of the taxable value of class eight property within the city or town for tax year 1995, and for bonds to be issued or other indebtedness to be incurred during fiscal years 1999 through 2008, an additional 33% of the taxable value of class eight property within the city or town for tax year 1995, in each case of class eight property, multiplied by 28%.

(2) The issuing of bonds for the purpose of funding or refunding outstanding warrants or bonds is not the incurring of a new or additional indebtedness but is merely the changing of the evidence of outstanding indebtedness.

(3) The limitation in subsection (1) does not apply to bonds issued for the repayment of tax protests lost by the city or town.

History: **En. Sec. 3, Ch. 160, L. 1931; re-en. Sec. 5278.3, R.C.M. 1935; amd. Sec. 1, Ch. 116, L. 1951; amd. Sec. 2, Ch. 34, L. 1955; amd. Sec. 1, Ch. 33, L. 1973; amd. Sec. 30, Ch. 566, L. 1977; R.C.M. 1947, 11-2303; amd. Sec. 2, Ch. 617, L. 1979; amd. Sec. 47, Ch. 614, L. 1981; amd. Sec. 11, Ch. 213, L. 1989; amd. Sec. 13, Ch. 570, L. 1995.**

Compiler's Comments

1995 Amendment: Chapter 570 in middle of (1), after "county taxes", inserted language limiting bonded indebtedness for class eight property for city or town (see 1995 Session Law for text); and made minor changes in style.

7-7-4202. Special provisions relating to water and sewer systems. (1) Notwithstanding the provisions of 7-7-4201, for the purpose of constructing a sewer system, procuring a water supply, or constructing or acquiring a water system for a city or town that owns and controls the water supply and water system and devotes the revenue from the water supply and water system to the payment of the debt, a city or town may incur an additional indebtedness by borrowing money or issuing bonds.

(2) The additional total indebtedness that may be incurred by borrowing money or issuing bonds for the construction of a sewer system, for the procurement of a water supply, or for both of the purposes, including all indebtedness that is contracted and that is unpaid or outstanding, may not in the aggregate exceed 55% over and above the 28%, referred to in 7-7-4201, of the taxable value of the property in the city or town subject to taxation to be ascertained by the last assessment for state and county taxes, plus, for indebtedness to be incurred during fiscal year 1997, an additional 11% of the taxable value of class eight property within the city or town for tax year 1995, for indebtedness to be incurred during fiscal year 1998, an additional 22% of the taxable value of class eight property within the city or town for tax year 1995, and for indebtedness to be incurred during fiscal years 1999 through 2008, an additional 33% of the taxable value of class eight property within the city or town for tax year 1995, in each case of class eight property, multiplied by 55%.

History: Ap. p. Sec. 3, Ch. 160, L. 1931; re-en. Sec. 5278.3, R.C.M. 1935; amd. Sec. 1, Ch. 116, L. 1951; amd. Sec. 2, Ch. 34, L. 1955; amd. Sec. 1, Ch. 33, L. 1973; amd. Sec. 30, Ch. 566, L. 1977; Sec. 11-2303, R.C.M. 1947; Ap. p. Subd. 64, Sec. 5039, R.C.M. 1921; amd. Sec. 1, Ch. 115, L. 1925; amd. Sec. 1, Ch. 20, L. 1927; re-en. Sec. 5039.63, R.C.M. 1935; amd. Sec. 1, Ch. 35, L. 1947; amd. Sec. 1, Ch. 152, L. 1953; amd. Sec. 1, Ch. 34, L. 1955; amd. Sec. 1, Ch. 38, L. 1959; amd. Sec. 1, Ch. 158, L. 1963; amd. Sec. 1, Ch. 100, L. 1973; Sec. 11-966, R.C.M. 1947; R.C.M. 1947, 11-966(part), 11-2303(part); amd. Sec. 3, Ch. 617, L. 1979; amd. Sec. 48, Ch. 614, L. 1981; amd. Sec. 14, Ch. 570, L. 1995.

Compiler's Comments

1995 Amendment: Chapter 570 in middle of (2), after "county taxes", inserted language limiting bonded indebtedness for class eight property for city or town water or sewer system (see 1995 Session Law for text); and made minor changes in style.

7-7-4203. What constitutes a single purpose. The following shall be deemed a single purpose:

(1) acquiring land for a site for a public building or for any other public use and constructing, erecting, or acquiring by purchase any building thereon and furnishing and equipping the same;

(2) acquiring of rights-of-way for street or other purposes, making improvements thereon, or constructing sewers or water pipelines;

(3) procuring of a water supply and constructing or acquiring of a water system and improving the same if necessary.

History: En. Sec. 2, Ch. 160, L. 1931; re-en. Sec. 5278.2, R.C.M. 1935; R.C.M. 1947, 11-2302.

7-7-4204. Nature of general obligation bonds. All bonds issued under the provisions of this part shall be legal and valid obligations of the city or town issuing the same, and the full faith and credit of such city or town are hereby irrevocably pledged for the prompt payment of both principal and interest thereof as the same become due.

History: En. Sec. 20, Ch. 160, L. 1931; re-en. Sec. 5278.20, R.C.M. 1935; R.C.M. 1947, 11-2320.

7-7-4205. Term of general obligation bonds. (1) Bonds for any purpose may not be issued for a longer term than 20 years.

(2) For purposes of this section, the term of a bond issue commences on July 1 of the fiscal year in which the city first levies taxes to pay principal and interest on the bonds.

History: En. Sec. 4, Ch. 160, L. 1931; amd. Sec. 1, Ch. 34, L. 1933; re-en. Sec. 5278.4, R.C.M. 1935; amd. Sec. 2, Ch. 62, L. 1945; amd. Sec. 4, Ch. 234, L. 1971; amd. Sec. 1, Ch. 284, L. 1973; R.C.M. 1947, 11-2304(part); amd. Sec. 3, Ch. 256, L. 1989.

7-7-4206. Redemption of bonds. All bonds issued for a longer term than 5 years shall be redeemable at the option of the city or town on any interest payment date after one-half of the term for which they were issued has expired, and it shall be so recited in the bonds.

History: En. Sec. 4, Ch. 160, L. 1931; amd. Sec. 1, Ch. 34, L. 1933; re-en. Sec. 5278.4, R.C.M. 1935; amd. Sec. 2, Ch. 62, L. 1945; amd. Sec. 4, Ch. 234, L. 1971; amd. Sec. 1, Ch. 284, L. 1973; R.C.M. 1947, 11-2304(part).

7-7-4207. Repealed. Sec. 2, Ch. 11, L. 1983.

History: En. Sec. 4, Ch. 160, L. 1931; amd. Sec. 1, Ch. 34, L. 1933; re-en. Sec. 5278.4, R.C.M. 1935; amd. Sec. 2, Ch. 62, L. 1945; amd. Sec. 4, Ch. 234, L. 1971; amd. Sec. 1, Ch. 284, L. 1973; R.C.M. 1947, 11-2304(part).

7-7-4208. Types of general obligation bonds. (1) Except as provided in subsection (2), all bonds issued by any city or town shall be either amortization bonds or serial bonds. All things being equal, amortization bonds shall be issued in preference to serial bonds; otherwise, serial bonds may be issued.

(2) Citizen bonds may be amortization bonds, serial bonds, term bonds, capital appreciation bonds, or zero-coupon bonds, with no preference for amortization bonds.

History: En. Sec. 5, Ch. 160, L. 1931; re-en. Sec. 5278.5, R.C.M. 1935; amd. Sec. 2, Ch. 152, L. 1953; R.C.M. 1947, 11-2305(part); amd. Sec. 6, Ch. 511, L. 1989.

7-7-4209. Amortization bonds. The term "amortization bonds", as used in this part, means that form of bond on which a part of the principal is required to be paid each time that interest becomes due and payable. The part payment of principal increases with each following installment in the same amount that the interest payment decreases, so that the combined amount payable on both principal and interest is the same on each interest payment date. However, the payment on the initial payment date may be less or greater than the amount of other payments on the bond, reflecting the payment of interest only or the payment of interest for a period different from that between other interest payment dates. The final payment may vary in amount from the other payments to the extent resulting from rounding amounts in the other payments.

History: En. Sec. 5, Ch. 160, L. 1931; re-en. Sec. 5278.5, R.C.M. 1935; amd. Sec. 2, Ch. 152, L. 1953; R.C.M. 1947, 11-2305(part); amd. Sec. 19, Ch. 423, L. 1995.

Compiler's Comments

1995 Amendment: Chapter 423 inserted third sentence concerning payment on initial payment date; in fourth sentence substituted "rounding amounts" for "disregarding fractional cents"; and made minor changes in style. Amendment effective April 13, 1995.

Applicability: Section 53, Ch. 423, L. 1995, provided: "[This act] applies to bonds issued under the provisions of [this act] after [the effective date of this act]." Effective April 13, 1995.

7-7-4210. Serial bonds. The term "serial bonds", as used in this part, means a bond issue payable in annual installments commencing not more than 2 years from the date of issue, any one installment consisting of one or more bonds, with the principal amount of bonds maturing in each installment not exceeding three times the principal amount of the bonds maturing in the immediately preceding installment.

History: **En. Sec. 5, Ch. 160, L. 1931; re-en. Sec. 5278.5, R.C.M. 1935; amd. Sec. 2, Ch. 152, L. 1953; R.C.M. 1947, 11-2305(part); amd. Sec. 4, Ch. 631, L. 1983; amd. Sec. 4, Ch. 256, L. 1989.**

7-7-4211. Citizen bonds authorized. (1) A city or town authorized to sell general obligation bonds under this chapter may issue and sell any portion of the bond in denominations of less than $5,000, either by competitive public sale or directly to members of the public, at preestablished interest rates.

(2) Citizen bonds may be issued for any purpose for which a city or town may issue general obligation bonds.

(3) Bonds issued under 7-7-4211 through 7-7-4213 may be known as "citizen bonds".

(4) An officer, employee, contracted financial consultant, or contracted advisor employed or retained by a city or town selling citizen bonds may not purchase those bonds.

History: **En. Sec. 1, Ch. 511, L. 1989.**

7-7-4212. Citizen bonds — procedural requirements prior to issuance. (1) Prior to final passage of the resolution provided for in 7-7-4236, a city or town shall notify the attorney general of its intention to issue citizen bonds.

(2) Prior to issuing citizen bonds, a city or town shall make available to interested investors:

(a) a preliminary official statement, a draft-form legal opinion from a recognized bond counsel, and a comparison to taxable yields at various income levels;

(b) application forms for the purchase of citizen bonds, which must specify at a minimum:

(i) the time, date, and place that applications will be received, the manner in which applications will be processed, and the conditions under which the sale may be canceled if the issue is not fully subscribed during the application period;

(ii) the issue date, maturity dates, and the dates on which interest will be earned and paid;

(iii) the denominations of the bonds and the maximum amount of bonds that any one buyer may purchase;

(iv) the approximate yield on the bonds if held to maturity and the manner in which interest rates have been calculated; and

(v) the provision made for the transfer of ownership of outstanding bonds; and

(c) any other information that the attorney general may require.

History: **En. Sec. 2, Ch. 511, L. 1989.**

7-7-4213. Citizen bonds — procedure when issue not fully subscribed. If an entire issue of unsubscribed bonds is not fully subscribed during the period of time that the city or town has set for the sale of the bonds, the citizen bonds may be sold in the manner permitted for other municipal general obligation bonds.

History: **En. Sec. 3, Ch. 511, L. 1989.**

7-7-4214. Zero-coupon and capital appreciation bonds. The terms "zero-coupon bonds" and "capital appreciation bonds", as used in Title 7, chapter 7, part 42, mean those forms of bonds that make no periodic interest payments but rather are sold at a discount from their face value.

History: En. Sec. 4, Ch. 511, L. 1989.

7-7-4215 through 7-7-4220 reserved.

7-7-4221. Election on question of incurring indebtedness — exception. (1) Except as provided in subsection (2) and 15-1-402, whenever the governing body of any municipality considers it necessary to issue bonds pledging the general credit of the municipality for any purpose authorized by law, the question of issuing the bonds shall first be submitted to the registered electors of the city or town.

(2) It is not necessary to submit to the electors the question of issuing refunding bonds to refund bonds issued and outstanding or the question of issuing revenue bonds not pledging the general credit of the municipality under any laws of this state.

History: En. Sec. 1, Ch. 160, L. 1931; amd. Sec. 1, Ch. 100, L. 1933; re-en. Sec. 5278.1, R.C.M. 1935; amd. Sec. 1, Ch. 12, L. 1937; amd. Sec. 1, Ch. 108, L. 1937; amd. Sec. 1, Ch. 15, L. 1943; amd. Sec. 1, Ch. 62, L. 1945; amd. Sec. 1, Ch. 413, L. 1973; R.C.M. 1947, 11-2301; amd. Sec. 5, Ch. 212, L. 1979; amd. Sec. 315, Ch. 571, L. 1979; amd. Sec. 7, Ch. 213, L. 1989.

7-7-4222. Election required for bond issue relating to water and sewer systems. Bonds backed by the full faith and credit of the city or town and issued for the construction, purchase, or securing of a water plant, water system, water supply, sewage treatment and disposal plant, or sewer system may not be issued until the proposition has been submitted to a vote and the majority vote cast in favor thereof.

History: En. Subd. 64, Sec. 5039, R.C.M. 1921; amd. Sec. 1, Ch. 115, L. 1925; amd. Sec. 1, Ch. 20, L. 1927; re-en. Sec. 5039.63, R.C.M. 1935; amd. Sec. 1, Ch. 35, L. 1947; amd. Sec. 1, Ch. 152, L. 1953; amd. Sec. 1, Ch. 34, L. 1955; amd. Sec. 1, Ch. 38, L. 1959; amd. Sec. 1, Ch. 158, L. 1963; amd. Sec. 1, Ch. 100, L. 1973; R.C.M. 1947, 11-966(part); amd. Sec. 1, Ch. 73, L. 1993.

7-7-4223. Procedure to call election on question of bonded indebtedness. An election on the question of issuing bonds may be called by the city or town council or commission on its passage of the necessary resolution, as hereinafter provided, or after there has been presented to the council or commission a petition asking that such election be held and question submitted.

History: En. Sec. 6, Ch. 160, L. 1931; re-en. Sec. 5278.6, R.C.M. 1935; amd. Sec. 2, Ch. 108, L. 1937; amd. Sec. 2, Ch. 15, L. 1943; amd. Sec. 9, Ch. 158, L. 1971; amd. Sec. 2, Ch. 413, L. 1973; R.C.M. 1947, 11-2306(part).

7-7-4224. Petition to request election. (1) A petition asking that an election be held on the question of issuing bonds shall be signed by not less than 20% of the qualified electors of the city or town. The petition shall give the street and house number, if any, and the voting precinct of each person signing the same.

(2) Every petition for the calling of an election to vote upon the question of issuing bonds shall plainly and clearly state the purpose or purposes for which it is proposed to issue such bonds and shall contain an estimate of the

amount necessary to be issued for such purpose or purposes. There may be a separate petition for each purpose, or two or more purposes may be combined in one petition if each purpose, with an estimate of the amount of bonds to be issued therefor, is separately stated in such petition.

(3) Such petition may consist of one sheet or of several sheets, identical in form and fastened together after being circulated and signed so as to form a single complete petition before being delivered to the city or town clerk as hereinafter provided.

(4) Only persons who are qualified to sign such petitions shall be qualified to circulate the same, and there shall be attached to the completed petition the affidavit of some person who circulated or assisted in circulating such petition that he believes the signatures thereon are genuine and that the signers knew the contents thereof before signing the same.

History: En. Sec. 6, Ch. 160, L. 1931; re-en. Sec. 5278.6, R.C.M. 1935; amd. Sec. 2, Ch. 108, L. 1937; amd. Sec. 2, Ch. 15, L. 1943; amd. Sec. 9, Ch. 158, L. 1971; amd. Sec. 2, Ch. 413, L. 1973; R.C.M. 1947, 11-2306(part).

7-7-4225. Presentation of petition to city or town clerk — clerk's certificate. (1) The completed petition shall be filed with the city or town clerk. The clerk shall, within 15 days thereafter, carefully examine the same and the county records showing the qualifications of the petitioners and attach thereto a certificate, under his official signature.

(2) The certificate shall set forth:

(a) the total number of persons who are registered electors;

(b) which and how many of the persons whose names are subscribed to such petition are possessed of all of the qualifications required of signers to such petition;

(c) whether such qualified signers constitute more or less than 20% of the registered electors of the city or town.

History: En. Sec. 6, Ch. 160, L. 1931; re-en. Sec. 5278.6, R.C.M. 1935; amd. Sec. 2, Ch. 108, L. 1937; amd. Sec. 2, Ch. 15, L. 1943; amd. Sec. 9, Ch. 158, L. 1971; amd. Sec. 2, Ch. 413, L. 1973; R.C.M. 1947, 11-2306(part).

7-7-4226. Resolution to submit question of issuing bonds to voters. (1) When the governing body of any municipality considers it necessary to issue bonds pledging the general credit of the municipality pursuant to a statute of this state, the governing body shall pass and adopt a resolution.

(2) The resolution must:

(a) recite the purpose or purposes for which it is proposed to issue the bonds;

(b) fix the amount of bonds to be issued for each purpose;

(c) determine the number of years through which the bonds are to be paid, not exceeding the limits fixed in 7-7-4205; and

(d) unless the bonds are revenue bonds not pledging the general credit of the municipality, make provisions that are necessary for submitting the question to the registered electors of the city or town at the next general city or town election or at a special election that is held in conjunction with a regular or primary election and that the governing body may call for the purpose.

(3) Whenever the bond issuance is proposed by petition, the governing body shall, before submitting the measure to the electors, pass a resolution

containing the information required in this section and setting forth the essential facts in regard to the filing and presentation of the petition.

History: En. 11-2307.1 by Sec. 3, Ch. 413, L. 1973; R.C.M. 1947, 11-2307.1; amd. Sec. 6, Ch. 212, L. 1979; amd. Sec. 316, Ch. 571, L. 1979; amd. Sec. 33, Ch. 387, L. 1995.

Compiler's Comments

1995 Amendment: Chapter 387 in (2)(d) inserted "that is held in conjunction with a regular or primary election"; and made minor changes in style.

7-7-4227. Notice of election. (1) Whether the election is held at the general city or town election or at a special election held in conjunction with a regular or primary election, separate notice of the election must be given.

(2) (a) The notice must state:

(i) the date when the election will be held;

(ii) the amount of bonds proposed to be issued;

(iii) the purpose of the bonds;

(iv) the term of years through which the bonds will be paid; and

(v) other information regarding the election and the proposed bonds that the board may consider proper.

(b) If the bonds proposed to be issued are for two or more purposes, each purpose and the amount for each purpose must be separately stated.

(3) The notice must be published as provided in 13-1-108 and may be posted in each voting precinct in the city or town at least 10 days prior to the date for holding the election.

History: En. Sec. 8, Ch. 160, L. 1931; re-en. Sec. 5278.8, R.C.M. 1935; R.C.M. 1947, 11-2308(part); amd. Sec. 317, Ch. 571, L. 1979; amd. Sec. 1, Ch. 407, L. 1989; amd. Sec. 34, Ch. 387, L. 1995.

Compiler's Comments

1995 Amendment: Chapter 387 in (1) inserted "held in conjunction with a regular or primary election"; deleted former (2)(a)(ii) that read: "(ii) the hours between which the polls will be open"; and made minor changes in style.

7-7-4228 through 7-7-4234. Repealed. Sec. 407, Ch. 571, L. 1979.

Compiler's Comments

Histories of Repealed Sections:

7-7-4228. En. Sec. 8, Ch. 160, L. 1931; re-en. Sec. 5278.8, R.C.M. 1935; R.C.M. 1947, 11-2308(part).

7-7-4229. En. Sec. 8, Ch. 160, L. 1931; re-en. Sec. 5278.8, R.C.M. 1935; R.C.M. 1947, 11-2308(part).

7-7-4230. En. Sec. 9, Ch. 160, L. 1931; re-en. Sec. 5278.9, R.C.M. 1935; R.C.M. 1947, 11-2309(part).

7-7-4231. En. Sec. 10, Ch. 160, L. 1931; re-en. Sec. 5278.10, R.C.M. 1935; amd. Sec. 1, Ch. 182, L. 1939; amd. Sec. 17, Ch. 64, L. 1959; amd. Sec. 10, Ch. 158, L. 1971; R.C.M. 1947, 11-2310(part).

7-7-4232. En. Sec. 10, Ch. 160, L. 1931; re-en. Sec. 5278.10, R.C.M. 1935; amd. Sec. 1, Ch. 182, L. 1939; amd. Sec. 17, Ch. 64, L. 1959; amd. Sec. 10, Ch. 158, L. 1071; R.C.M. 1947, 11-2310(part).

7-7-4233. En. Sec. 9, Ch. 160, L. 1931; re-en. Sec. 5278.9, R.C.M. 1935; R.C.M. 1947, 11-2309(part).

7-7-4234. En. Sec. 12, Ch. 160, L. 1931; re-en. Sec. 5278.12, R.C.M. 1935; R.C.M. 1947, 11-2312(part).

7-7-4235. Percentage of electors required to authorize the issuing of bonds. Whenever the question of issuing bonds for any purpose is submitted to the registered electors of a city or town at either a general election or a special election held in conjunction with a regular or primary election, the determination of the approval or rejection of the bond proposition is made in the following manner:

(1) determine the total number of electors who were qualified to vote in the bond election;

(2) determine the total number of qualified electors who voted in the bond election from the tally sheet or sheets for the election;

(3) calculate the percentage of qualified electors voting at the bond election by dividing the number determined in subsection (2) by the number determined in subsection (1); and

(4) when the calculated percentage in subsection (3) is 40% or more, the bond proposition is considered approved and adopted if a majority of the votes cast were in favor of the proposition, otherwise it is considered rejected; or

(5) when the calculated percentage in subsection (3) is more than 30% but less than 40%, the bond proposition is considered approved and adopted if 60% or more of the votes cast were in favor of the proposition, otherwise it is considered rejected; or

(6) when the calculated percentage in subsection (3) is 30% or less, the bond proposition is considered rejected.

History: En. Sec. 11, Ch. 160, L. 1931; re-en. Sec. 5278.11, R.C.M. 1935; R.C.M. 1947, 11-2311; amd. Sec. 318, Ch. 571, L. 1979; amd. Sec. 3, Ch. 336, L. 1989; amd. Sec. 35, Ch. 387, L. 1995.

Compiler's Comments

1995 Amendment: Chapter 387 in (1) inserted "held in conjunction with a regular or primary election"; and made minor changes in style.

7-7-4236. Resolution to sell bonds. (1) If issuing of bonds has been approved as provided in 7-7-4235, the city or town council shall pass a resolution calling for the sale of the bonds.

(2) The resolution calling for the sale of the bonds must state:

(a) the purpose for which the bonds are to be issued;

(b) the amount of the bonds to be issued;

(c) the minimum purchase price of the bonds;

(d) the date that the bonds will bear;

(e) the period of time through which the bonds are payable;

(f) the optional redemption provisions, if any;

(g) that a bond may be redeemed in full, at the option of the city or town, on any interest payment date after expiration of one-half of the term for which the bond was issued; and

(h) a form of notice of the sale of the bonds.

(3) The resolution must, except in a bond issue of citizen bonds, fix the denomination of serial bonds in case it is found advantageous to issue bonds in that form. The council may in its discretion provide that the bonds may be issued and sold in two or more series or installments.

(4) The city or town council may fix the minimum price for the bonds in an amount not less than 97% of the face value if the city or town council determines that the sale is in the best interests of the city or town.

History: En. Sec. 12, Ch. 160, L. 1931; re-en. Sec. 5278.12, R.C.M. 1935; R.C.M. 1947, 11-2312(part); amd. Sec. 7, Ch. 212, L. 1979; amd. Sec. 4, Ch. 336, L. 1989; amd. Sec. 7, Ch. 511, L. 1989; amd. Sec. 20, Ch. 423, L. 1995.

Compiler's Comments

1995 Amendment: Chapter 423 substituted (1) concerning approval and calling for sale of bonds for former text that read: "(1) If a sufficient percentage of the qualified electors of the city or town entitled to vote on the question of issuing bonds voted thereon and a sufficient percentage of the votes were cast in favor of the issuing of the bonds as provided in 7-7-4235, the city or town council shall, at a regular or special meeting held within 30 days thereafter, pass a resolution providing for the issuance of the bonds"; in (2) substituted "must state" for "shall recite"; substituted (2)(c) concerning minimum purchase price for former text that read: "the maximum rate of interest the bonds may bear"; inserted (1)(f) concerning optional redemption provisions; inserted (1)(h) concerning form of notice of sale; in (3), in first sentence after "resolution", deleted "shall provide for the manner of execution of the bonds" and after "bonds" deleted "preference shall be given amortization bonds"; substituted (4) concerning minimum price for bonds for former text that read: "The resolution shall adopt a form of notice of the sale of the bonds"; and made minor changes in style. Amendment effective April 13, 1995.

Applicability: Section 53, Ch. 423, L. 1995, provided: "[This act] applies to bonds issued under the provisions of [this act] after [the effective date of this act]." Effective April 13, 1995.

7-7-4237 through 7-7-4250 reserved.

7-7-4251. Form of notice of sale of bonds. (1) The notice of sale shall state the purpose or purposes for which the bonds are to be issued and the amount proposed to be issued for each purpose and shall be substantially in the following form:

NOTICE OF SALE OF (CITY OR TOWN) BONDS

Notice is hereby given by the council of the (city or town) of ...., Montana, that the council will, on the .... day of ...., 19.., at the hour of ....m., at its council chamber in the (city or town) of ...., Montana, sell to the highest and best bidder for cash either amortization or serial bonds of the said (city or town) in the total amount of .... dollars, ($....) for the purpose of .....

Amortization bonds will be the first choice and serial bonds will be the second choice of the council.

If amortization bonds are sold and issued, the entire issue may be put into one single bond or divided into several bonds as the council may determine at the time of sale, both principal and interest to be payable in semiannual installments during a period of .... years from the date of issue.

If serial bonds are issued and sold, they will be in the amount of .... dollars ($....) each and will become due and payable according to the maturity schedule set forth below (set forth maturity schedule adopted by the city or town council).

The bonds, whether amortization or serial bonds, will bear date of ...., 19.., will bear interest at a rate not exceeding ....% per annum commencing on the .... day of .... (month), 19.., and payable semiannually on the .... day of .... and on the .... day of .... in each year thereafter and will be redeemable (here insert the optional provisions, if any, recited in the bonds).

Said bonds will be sold for not less than their par value with accrued interest to date of delivery, and all bidders must state the lowest rate of interest at which they will purchase the bonds at par. The council reserves the right to reject any and all bids and to sell said bonds at private sale.

All bids other than by or on behalf of the board of investments of the state of Montana must be accompanied by a certified check in the sum of .... dollars ($....), payable to the order of the (city or town) clerk, which will be forfeited by the successful bidder in the event he shall fail or refuse to complete the purchase of said bonds in accordance with the terms of his bid.

All bids shall be addressed to the council of the (city or town) of .... and delivered to the clerk of said (city or town).

....
Mayor of the (city or town) of
............., Montana

ATTEST:

....
(City or Town) Clerk

(2) The form of notice required under this section may be modified to accommodate changes necessary to issue citizen bonds pursuant to 7-7-4211 through 7-7-4213.

History: En. Sec. 13, Ch. 160, L. 1931; re-en. Sec. 5278.13, R.C.M. 1935; amd. Sec. 100, Ch. 326, L. 1974; R.C.M. 1947, 11-2313; amd. Sec. 2, Ch. 500, L. 1981; amd. Sec. 1, Ch. 11, L. 1983; amd. Sec. 5, Ch. 631, L. 1983; amd. Sec. 8, Ch. 511, L. 1989.

7-7-4252. Publication of notice of sale. The city or town council or commission shall cause such notice to be published as provided in 17-5-106 in a newspaper of general circulation printed and published in said city or town if there be one and, if not, then in a newspaper of general circulation printed and published in the county in which said city or town is located. The council or commission may in its discretion cause such notice to be published in such other newspaper or newspapers published either within or without the state as in the opinion of the council or commission will be most likely to give notice of such sale to prospective bidders.

History: En. Sec. 14, Ch. 160, L. 1931; re-en. Sec. 5278.14, R.C.M. 1935; amd. Sec. 1, Ch. 38, L. 1955; amd. Sec. 100, Ch. 326, L. 1974; R.C.M. 1947, 11-2314(part); amd. Sec. 3, Ch. 173, L. 1987.

7-7-4253. Repealed. Sec. 5, Ch. 6, L. 1993.

History: En. Sec. 14, Ch. 160, L. 1931; re-en. Sec. 5278.14, R.C.M. 1935; amd. Sec. 1, Ch. 38, L. 1955; amd. Sec. 100, Ch. 326, L. 1974; R.C.M. 1947, 11-2314(part).

7-7-4254. Procedure for sale of bonds. (1) The city or town council shall meet at the time and place fixed in the notice to consider bids for the bonds.

(2) The bonds may not be sold at less than the minimum bid specified for their sale with accrued interest to date of delivery, and each bidder shall specify the rate of interest and the purchase price at which the bidder will purchase the bonds. The council shall accept the bid that it judges most advantageous to the city or town. The council may reject any bids and sell the bonds at private sale if the council considers it in the best interests of the city or town.

(3) Consultant fees and attorney fees may be paid to any person or corporation for assisting in the proceedings, in the preparation of the bonds, or in negotiating the sale of the bonds.

History: En. Sec. 15, Ch. 160, L. 1931; re-en. Sec. 5278.15, R.C.M. 1935; amd. Sec. 8, Ch. 234, L. 1971; R.C.M. 1947, 11-2315; amd. Sec. 8, Ch. 212, L. 1979; amd. Sec. 6, Ch. 631, L. 1983; amd. Sec. 21, Ch. 423, L. 1995.

Compiler's Comments

1995 Amendment: Chapter 423 in (2), in first sentence after "less than", substituted "the minimum bid specified for their sale" for "par", after "specify" deleted "the form of bonds to be issued, whether amortization or serial", and after "interest" inserted "and the purchase price", deleted former second and third sentences that read: "A bid for amortization bonds shall have preference over a bid for serial bonds, all other things being equal. In determining the kind of bonds to be issued, the council shall take into consideration not only the rate of interest demanded on each kind but also all other known elements affecting the interests of the city or town", and at end of last sentence deleted "provided, however, that the bonds may not be sold at less than par with accrued interest to date of delivery"; and made minor changes in style. Amendment effective April 13, 1995.

Applicability: Section 53, Ch. 423, L. 1995, provided: "[This act] applies to bonds issued under the provisions of [this act] after [the effective date of this act]." Effective April 13, 1995.

7-7-4255. Form and execution of bonds. (1) At the time of the sale of the bonds or at a meeting held after the sale, the city or town council shall adopt a resolution providing for the issuance of the bonds, prescribing the form of the bonds, whether amortization or serial bonds, and providing the manner of execution of the bonds.

(2) Each bond and each coupon attached to a bond must be signed by or bear the facsimile signatures of the mayor and the treasurer of the city or town and must be attested by the city or town clerk, provided that one signature of a city or town official or the bond registrar must be a manual signature. Each bond may have the city or town seal or its facsimile imprinted on the bond.

History: En. Sec. 16, Ch. 160, L. 1931; re-en. Sec. 5278.16, R.C.M. 1935; amd. Sec. 6, Ch. 260, L. 1959; R.C.M. 1947, 11-2316; amd. Sec. 22, Ch. 423, L. 1995.

Compiler's Comments

1995 Amendment: Chapter 423 in (1), after "shall", inserted "adopt a resolution providing for the issuance of the bonds" and at end substituted "providing the manner of execution of the bonds" for "of the coupons to be attached thereto"; in (2), in first sentence after "signed by", inserted "or bear the facsimile signatures of" and at end inserted proviso for one manual signature and at end of second sentence substituted "or its facsimile imprinted on the bond" for "affixed thereto"; and made minor changes in style. Amendment effective April 13, 1995.

Applicability: Section 53, Ch. 423, L. 1995, provided: "[This act] applies to bonds issued under the provisions of [this act] after [the effective date of this act]." Effective April 13, 1995.

7-7-4256. Printing of bonds. (1) Except as provided in subsection (2), the city or town clerk, under the direction of the council, shall cause the bonds, with coupons attached thereto, to be printed or lithographed at the expense of the city or town at lowest commercial rates.

(2) A purchaser of such bonds may furnish the same to the city or town, in the form prescribed by the council, for execution, if the same is done at his own expense and without cost or expense to the city or town.

History: En. Sec. 17, Ch. 160, L. 1931; re-en. Sec. 5278.17, R.C.M. 1935; R.C.M. 1947, 11-2317.

7-7-4257. Registration of bonds. (1) When executed by the officers of the city or town, the bonds must be registered by the city treasurer or town clerk before being delivered to the purchaser.

(2) The registration must show:

(a) the date of issue, the maturities of the bonds subject to early redemption, the redemption dates, and the dates when the principal and interest on the bonds will become due; and

(b) the amount of all payments of both principal and interest required on each bond, with the dates when the payments must be made.

History: En. Sec. 18, Ch. 160, L. 1931; re-en. Sec. 5278.18, R.C.M. 1935; R.C.M. 1947, 11-2318(part); amd. Sec. 23, Ch. 423, L. 1995.

Compiler's Comments

1995 Amendment: Chapter 423 in (1), after "clerk", deleted "in a book provided for that purpose"; deleted former (2)(a) that read: "(a) the number and amount of each bond"; in (2)(a) substituted "the maturities of the bonds subject to early redemption, the redemption dates" for "date redeemable" and substituted "principal and interest on the bonds" for "same"; deleted (2)(d) that read: "(d) the name and address of the purchaser"; and made minor changes in style. Amendment effective April 13, 1995.

Applicability: Section 53, Ch. 423, L. 1995, provided: "[This act] applies to bonds issued under the provisions of [this act] after [the effective date of this act]." Effective April 13, 1995.

Cross-References

System of registration, 17-5-1111.

7-7-4258. Copy of bond to be kept by city treasurer or town clerk. The city or town clerk shall also deliver to the city treasurer or town clerk an unsigned and canceled printed copy of one of the bonds, as so issued and registered, to be preserved in his office.

History: En. Sec. 18, Ch. 160, L. 1931; re-en. Sec. 5278.18, R.C.M. 1935; R.C.M. 1947, 11-2318(part).

7-7-4259. Delivery of bonds. The city treasurer or town clerk shall deliver the bonds to the purchaser upon receiving full payment for the bonds.

History: En. Sec. 19, Ch. 160, L. 1931; re-en. Sec. 5278.19, R.C.M. 1935; amd. Sec. 2, Ch. 326, L. 1974; R.C.M. 1947, 11-2319(part); amd. Sec. 6, Ch. 581, L. 1987; amd. Sec. 24, Ch. 423, L. 1995.

Compiler's Comments

1995 Amendment: Chapter 423 deleted (1) that read: "(1) If the board of investments is the purchaser of the bonds, the city treasurer or town clerk shall forward the registered bonds to the department of commerce. The department shall deliver them to the state treasurer, and payment therefor shall be made in the manner provided by law"; at beginning deleted "If the bonds are purchased by other investors"; and made minor changes in style. Amendment effective April 13, 1995.

Applicability: Section 53, Ch. 423, L. 1995, provided: "[This act] applies to bonds issued under the provisions of [this act] after [the effective date of this act]." Effective April 13, 1995.

7-7-4260. Disposition of sale proceeds. All money arising from the sale of the bonds shall be paid to the city treasurer or town clerk and shall be immediately available for the purpose for which the bonds were issued and for no other purpose.

History: En. Sec. 19, Ch. 160, L. 1931; re-en. Sec. 5278.19, R.C.M. 1935; amd. Sec. 2, Ch. 326, L. 1974; R.C.M. 1947, 11-2319(part).

7-7-4261. Maintenance of accounts for bond issues. (1) The city treasurer or town clerk shall keep in his books a special and separate sinking fund account for each issue or series of outstanding bonds, including citizen bonds as provided in 7-7-4211 through 7-7-4214, issued by his city or town. Each such fund must at all times show the exact condition thereof.

(2) All taxes collected for interest and principal on city or town bonds shall be placed to the credit of the sinking fund for which the taxes were levied.

(3) The sinking fund shall be administered as provided in 7-7-123, 7-7-124, and 7-7-4270.

History: En. Sec. 24, Ch. 160, L. 1931; re-en. Sec. 5278.24, R.C.M. 1935; R.C.M. 1947, 11-2324(part); amd. Sec. 5, Ch. 256, L. 1979; amd. Sec. 9, Ch. 511, L. 1989.

7-7-4262. Payment of principal and interest. The city treasurer or town clerk shall pay from the proper sinking and interest fund the interest and principal of each issue or series of outstanding bonds, as the interest and principal become due and at the place where the bonds are payable, upon presentation and surrender of the coupon or bond to be paid.

History: En. Sec. 25, Ch. 160, L. 1931; re-en. Sec. 5278.25, R.C.M. 1935; R.C.M. 1947, 11-2325(part); amd. Sec. 25, Ch. 423, L. 1995.

Compiler's Comments

1995 Amendment: Chapter 423 deleted former last sentence that read: "If the bonds are held by the state, then all such payments shall be made at the office of the state treasurer, who shall cancel the coupons or bonds and return the same to the city treasurer or town clerk, together with his receipt therefor"; and made minor changes in style. Amendment effective April 13, 1995.

Applicability: Section 53, Ch. 423, L. 1995, provided: "[This act] applies to bonds issued under the provisions of [this act] after [the effective date of this act]." Effective April 13, 1995.

7-7-4263. Interest on late payments of principal and interest. Any and all installments of interest or principal of bonds issued under the provisions of this part not promptly paid when due shall draw interest at the rate of 6% per annum from the date due until actually paid, irrespective of the rate of interest on the bonds themselves.

History: En. Sec. 25, Ch. 160, L. 1931; re-en. Sec. 5278.25, R.C.M. 1935; R.C.M. 1947, 11-2325(part).

7-7-4264. Statement as to amount of principal and interest due and payable on bonds. (1) Whenever any city or town has any issue or series of bonds outstanding and there are not sufficient funds on hand available for the payment of the full amount of the interest and principal thereof, the city treasurer or town clerk shall, between July 1 and July 15 in each year while such bonds or any of them remain outstanding and unpaid, make out and deliver to the city or town clerk a statement.

(2) The statement required by subsection (1) shall show the amount required to be raised by tax levy during the then-current fiscal year for payment of interest and principal becoming due and payable during such fiscal year or within 90 days thereafter on each issue or series of bonds outstanding. If no part of the principal of any such issue or series of bonds outstanding or if no part of the principal of any such issue or series of bonds will become due and payable within such time, then such statement shall show the amount required to be raised by tax levy during such year for payment of interest becoming due during such time and to place the proper amount in the sinking fund for the payment of the principal of such bonds when they become due, as provided in 7-7-4204.

(3) The statement prepared by the city treasurer or town clerk shall be presented by the city or town clerk to the city or town council at its next meeting.

History: En. Sec. 21, Ch. 160, L. 1931; re-en. Sec. 5278.21, R.C.M. 1935; R.C.M. 1947, 11-2321.

7-7-4265. Tax levy for payment of bonds. (1) The city or town council, at the time of making the levy of taxes for general city or town purposes, must levy a separate and special tax upon all taxable property in the city or town for the payment of interest and principal for each series or issue of bonds outstanding. The tax levy for any one series or issue of bonds must be entirely separate and distinct from the levy for any other issue or series of bonds.

(2) Except as provided in subsection (3), the levy made for the purpose of paying interest on and principal of each series or issue of bonds must be high enough to raise an amount sufficient to pay all interest on and so much of the principal, if any, of the bonds as will become due and payable during the then-current fiscal year or within 90 days thereafter, as such amount is shown by the treasurer's statement provided for by 7-7-4264. If no part of the principal of such bonds will become due and payable within such time, then such tax levy must be high enough to raise an amount sufficient to pay all interest which will

become due and payable during the current fiscal year or within 90 days thereafter and to also place in the sinking fund for such issue or series of bonds, for the payment of the principal when the same becomes due, an amount not less than a sum produced by dividing the whole amount for which the series or issue of bonds were originally issued by the number of years for which such series or issue of bonds were originally issued to run, as such amounts are shown by the treasurer's statement provided for by 7-7-4264.

(3) The annual levies made for the purpose of paying off bonds that provide for no periodic interest payments but rather are sold at a discount from their face value, as provided in 7-7-4211 through 7-7-4214, must be actuarially sufficient so that at the time for redemption there is an amount in the sinking fund sufficient to redeem the bonds.

History: **En. Sec. 22, Ch. 160, L. 1931; re-en. Sec. 5278.22, R.C.M. 1935; R.C.M. 1947, 11-2322; amd. Sec. 9, Ch. 212, L. 1979; amd. Sec. 10, Ch. 511, L. 1989.**

7-7-4266. Procedure in case of insufficient tax levy — individual liability of council members. (1) If the council of any city or town shall fail, neglect, or refuse in any year to make a levy sufficient to pay the interest on and principal of any issue or series of bonds as required by the provisions of 7-7-4265, the holder of any bond of such issue or series or any taxpayer paying taxes on property situated in such city or town may apply to the district court of the county in which the city or town issuing such bonds is situated for a writ of mandate to compel the city or town council to make a proper and sufficient levy for such purposes.

(2) If, upon the hearing of such application, it shall appear to the satisfaction of the court that the city or town council has failed, neglected, or refused to make any levy whatever for such purposes or has made a levy but that the same is insufficient to raise the amount required to be raised for such purposes under the provisions of 7-7-4265, the court shall determine the amount of the deficiency and shall issue a writ of mandate directed to and requiring such city or town council, at the next meeting thereof for the purpose of making and fixing city or town levies, to make and fix a tax levy against all taxable property in such city or town sufficient to raise the amount of such deficiency. This levy shall be in addition to the levy required to be made for the then-current fiscal year.

(3) Any costs which may be allowed or awarded the petition in any such proceeding shall be paid by the members of the city or town council and shall not be a charge against the city or town.

History: **En. Sec. 23, Ch. 160, L. 1931; re-en. Sec. 5278.23, R.C.M. 1935; R.C.M. 1947, 11-2323.**

Cross-References

Writ of Mandate, Title 27, ch. 26.

7-7-4267. Repealed. Sec. 52, Ch. 423, L. 1995.

History: **En. Sec. 26, Ch. 160, L. 1931; re-en. Sec. 5278.26, R.C.M. 1935; amd. Sec. 100, Ch. 326, L. 1974; R.C.M. 1947, 11-2326(part).**

7-7-4268. Redemption of bonds. (1) Whenever there is available money in any sinking and interest fund over and above the amount required for payment of principal and interest becoming due on the next interest payment date and sufficient to pay and redeem one or more of the outstanding bonds of the issue or series to which the sinking and interest fund belongs, which bonds are not yet due but are then redeemable or will become redeemable on or before the next interest payment date, the city treasurer or town clerk shall apply the available money in redemption of as many of the bonds as the available money will pay and redeem to a redemption date on or before the next interest payment date, as fixed by the city treasurer or town clerk.

(2) The city treasurer or town clerk shall notify the holder of the bond or bonds, if ownership of the bonds is registered or is otherwise known to the treasurer, the registered owners at their addresses as they appear in the bond registration books, and any bank or financial institution at which the bonds are payable, by mail sent at least 30 days before the redemption date, that bonds will be redeemed and paid on that date. A defect in or failure to give notice may not affect the validity of the proceedings for the redemption of a bond or principal installment not affected by the defect or failure. If the ownership of the bonds is not registered, the city treasurer or town clerk shall also publish in a newspaper of general circulation printed and published in the city or town and, if there is none, then in a newspaper of general circulation in the city or town printed and published in the county in which the city or town is situated a notice that the bond or bonds have been called for redemption and will be paid in full on the redemption date. The notice must be published once, not less than 30 days prior to the redemption date. If actual notice of the call has been received, the holder of a bond may waive published or mailed notice.

(3) If the bonds are payable at a bank or financial institution, the city treasurer or town clerk shall remit to the bank or financial institution, before the redemption date, an amount sufficient to pay and redeem the bonds. If the bonds are not presented for redemption and payment on the redemption date, interest ceases on that date if the funds have been deposited in the bank or financial institution.

History: En. Sec. 26, Ch. 160, L. 1931; re-en. Sec. 5278.26, R.C.M. 1935; amd. Sec. 100, Ch. 326, L. 1974; R.C.M. 1947, 11-2326(part); amd. Sec. 3, Ch. 453, L. 1993; amd. Sec. 26, Ch. 423, L. 1995.

Compiler's Comments

1995 Amendment: Chapter 423 in (2), near end of first sentence, increased time of notice from 15 days to 30 days, at end of second sentence inserted "or principal installment not affected by the defect or failure", in fourth sentence substituted "once, not less than 30 days prior to the redemption date" for "once a week for 2 successive weeks immediately preceding the interest payment date", and in fifth sentence substituted "received" for "given through a different means for its redemption"; in (3), in first sentence before "institution", inserted "financial" and at end of second sentence inserted "if the funds have been deposited in the bank or financial institution"; and made minor changes in style. Amendment effective April 13, 1995.

Applicability: Section 53, Ch. 423, L. 1995, provided: "[This act] applies to bonds issued under the provisions of [this act] after [the effective date of this act]." Effective April 13, 1995.

7-7-4269. Order of redemption of bonds. All bonds to be redeemed under the provisions of 7-7-4268 may be redeemed in the order that the city treasurer or city clerk selects, consistent with the provisions of the resolution authorizing the issuance of the bonds.

History: En. Sec. 26, Ch. 160, L. 1931; re-en. Sec. 5278.26, R.C.M. 1935; amd. Sec. 100, Ch. 326, L. 1974; R.C.M. 1947, 11-2326(part); amd. Sec. 4, Ch. 453, L. 1993; amd. Sec. 27, Ch. 423, L. 1995.

Compiler's Comments

1995 Amendment: Chapter 423 deleted reference to 7-7-4267; and made minor changes in style. Amendment effective April 13, 1995.

Applicability: Section 53, Ch. 423, L. 1995, provided: "[This act] applies to bonds issued under the provisions of [this act] after [the effective date of this act]." Effective April 13, 1995.

7-7-4270. Authority to buy outstanding bonds. Whenever there is available money in any sinking fund over and above the amount required for payment of principal and interest becoming due on the next interest payment date and sufficient to pay and redeem one or more outstanding bonds of the issue or series to which the sinking fund belongs and whenever such bonds are not held by the state and are not subject to redemption, the city treasurer or town clerk, at the direction of the city or town council, shall purchase such bonds if this can be done at not more than par and accrued interest or at such reasonable premium as the council may feel justified in paying, not, in any case, exceeding 5%.

History: En. Sec. 27, Ch. 160, L. 1931; re-en. Sec. 5278.27, R.C.M. 1935; R.C.M. 1947, 11-2327(part); amd. Sec. 6, Ch. 256, L. 1979.

7-7-4271. Repealed. Sec. 7, Ch. 256, L. 1979.

History: En. Sec. 27, Ch. 160, L. 1931; re-en. Sec. 5278.27, R.C.M. 1935; R.C.M. 1947, 11-2327(part).

7-7-4272. Cancellation of bonds and coupons. (1) All bonds and interest coupons paid by the city treasurer or town clerk from time to time shall be canceled by him, and after such cancellation, he shall deliver the same to the city or town clerk, with a report showing the numbers of such bonds and the amounts paid as principal and interest thereon. The city treasurer or town clerk shall enter on the records of the registration of such bonds the date of the payment of the same and the several coupons attached thereto.

(2) The city or town clerk shall exhibit such bonds and coupons, with such report, to the city or town council at the next regular meeting thereof.

History: En. Sec. 28, Ch. 160, L. 1931; re-en. Sec. 5278.28, R.C.M. 1935; R.C.M. 1947, 11-2328(part).

7-7-4273. Cancellation of warrants and refunded general obligation bonds. (1) Whenever bonds are issued for the purpose of funding outstanding warrants or refunding outstanding bonds, the city treasurer or town clerk shall, upon taking up such warrants or bonds, cancel the same, keep a record thereof, and deliver the same to the city or town clerk, with a report showing the numbers thereof and the amounts paid for principal and interest.

(2) The city or town clerk shall exhibit such warrants or bonds, with such report, to the city or town council at the next regular meeting thereof.

History: En. Sec. 28, Ch. 160, L. 1931; re-en. Sec. 5278.28, R.C.M. 1935; R.C.M. 1947, 11-2328(part).

7-7-4274. Closing of accounts and transfer of money to other funds. When all bonds of any series or issue, with the interest thereon, have been fully paid or called in for payment and there remains in the sinking and interest fund for such series or issue any amount not required for the payment of such bonds and interest, such excess amount and all amounts subsequently collected for such fund shall be transferred to the general fund of the city or town or to the sinking and interest fund of any other issue or series of bonds outstanding that the city or town council may designate.

History: **En. Sec. 24, Ch. 160, L. 1931; re-en. Sec. 5278.24, R.C.M. 1935; R.C.M. 1947, 11-2324(part).**

7-7-4275. Refunding of bond issue held by state by exchange for amortization bonds. (1) Subject to the approval of the board of investments, the council of any city or town is hereby authorized to issue amortization bonds for the purpose of refunding any outstanding bonds of such city or town held by the state and which were not issued either as amortization or serial bonds and to exchange the same for such outstanding bonds.

(2) Such amortization bonds shall conform in all respects to the definition of amortization bonds as set forth in 7-7-4209 and shall bear interest at such rate as may be agreed upon between the council of such city or town and the board of investments pursuant to 17-5-102. Such amortization bonds may be issued and exchanged for such outstanding bonds without submitting the question of issuing the same at an election, and it shall not be necessary to publish any notice of sale of such bonds.

(3) This section shall not be construed so as to deprive city or town councils of the right to advertise, sell, and issue refunding bonds in the manner provided in part 43.

History: **En. Sec. 29, Ch. 160, L. 1931; re-en. Sec. 5278.29, R.C.M. 1935; amd. Sec. 100, Ch. 326, L. 1974; R.C.M. 1947, 11-2329; amd. Sec. 3, Ch. 500, L. 1981; amd. Sec. 1, Ch. 11, L. 1983.**

Part 43

Municipal Refunding General Obligation Bonds

7-7-4301. Authorization to issue refunding general obligation bonds. The city or town council may contract an indebtedness on behalf of a city or town, upon the credit of the city or town, by issuing bonds for the funding of outstanding warrants and maturing bonds when there are not sufficient funds available to pay the outstanding warrants or maturing bonds or when there is a reduction in debt service as a result of refunding pursuant to 7-7-4304.

History: **En. Subd. 64, Sec. 5039, R.C.M. 1921; amd. Sec. 1, Ch. 115, L. 1925; amd. Sec. 1, Ch. 20, L. 1927; re-en. Sec. 5039.63, R.C.M. 1935; amd. Sec. 1, Ch. 35, L. 1947; amd. Sec. 1, Ch. 152, L. 1953; amd. Sec. 1, Ch. 34, L. 1955; amd. Sec. 1, Ch. 38, L. 1959; amd. Sec. 1, Ch. 158, L. 1963; amd. Sec. 1, Ch. 100, L. 1973; R.C.M. 1947, 11-966(part); amd. Sec. 28, Ch. 423, L. 1995.**

Compiler's Comments

1995 Amendment: Chapter 423 at end inserted "when there are not sufficient funds available to pay the outstanding warrants or maturing bonds or when there is a reduction in debt service as a result of refunding pursuant to 7-7-4304"; and made minor changes in style. Amendment effective April 13, 1995.

Applicability: Section 53, Ch. 423, L. 1995, provided: "[This act] applies to bonds issued under the provisions of [this act] after [the effective date of this act]." Effective April 13, 1995.

7-7-4302. Applicability of certain other bond provisions. (1) The provisions of 7-7-4201 through 7-7-4206, 7-7-4208 through 7-7-4210, 7-7-4255 through 7-7-4266, 7-7-4268 through 7-7-4270, and 7-7-4272 through 7-7-4274 apply to refunding bonds issued under this part; however, the city or town council may at its option sell bonds issued under this part at a private negotiated sale or at a public sale conducted pursuant to the provisions of 7-7-4251, 7-7-4252, and 7-7-4254.

(2) If a refunding bond issue refunds only a portion of an outstanding bond issue, the unrefunded portion of the outstanding bond issue and the refunding bond issue must be treated as a single bond issue for the purposes of 7-7-4210.

History: **En. by Code Commissioner, 1979; amd. Sec. 2, Ch. 647, L. 1983; amd. Sec. 16, Ch. 370, L. 1987; amd. Sec. 2, Ch. 6, L. 1993; amd. Sec. 29, Ch. 423, L. 1995.**

Compiler's Comments

1995 Amendment: Chapter 423 in (1) deleted reference to 7-7-4267; and inserted (2) concerning unrefunded portion of outstanding bond issue. Amendment effective April 13, 1995.

Applicability: Section 53, Ch. 423, L. 1995, provided: "[This act] applies to bonds issued under the provisions of [this act] after [the effective date of this act]." Effective April 13, 1995.

7-7-4303. Term of refunding general obligation bonds. (1) Except as provided in subsection (2), when bonds are issued for the purpose of refunding bonds theretofore issued and outstanding, such bonds shall not be issued for a longer term than 10 years.

(2) If the unexpired term of the bonds to be refunded shall be more than 10 years, the refunding bonds may be issued for such unexpired term.

History: **En. Sec. 4, Ch. 160, L. 1931; amd. Sec. 1, Ch. 34, L. 1933; re-en. Sec. 5278.4, R.C.M. 1935; amd. Sec. 2, Ch. 62, L. 1945; amd. Sec. 4, Ch. 234, L. 1971; amd. Sec. 1, Ch. 284, L. 1973; R.C.M. 1947, 11-2304(part).**

7-7-4304. Interest rate on refunding general obligation bonds. (1) Except as provided in subsection (2), refunding bonds may not be issued unless the refunding bonds bear interest at a rate of at least 1/2 of 1% less than the interest rate of the outstanding bonds to be refunded.

(2) Refunding bonds may bear interest in excess of the rate on the refunded bonds if the issuance of the refunding bonds, including the total costs of refunding the bonds, results in a reduction of total debt service cost to the city or town.

(3) Refunding bonds may be issued in a principal amount greater than the principal amount of the outstanding bonds if there is a reduction of total debt service cost to the county.

History: **En. Sec. 1, Ch. 160, L. 1931; amd. Sec. 1, Ch. 100, L. 1933; re-en. Sec. 5278.1, R.C.M. 1935; amd. Sec. 1, Ch. 12, L. 1937; amd. Sec. 1, Ch. 108, L. 1937; amd. Sec. 1, Ch. 15, L. 1943; amd. Sec. 1, Ch. 62, L. 1945; amd. Sec. 1, Ch. 413, L. 1973; R.C.M. 1947, 11-2301(part); amd. Sec. 2, Ch. 54, L. 1989; amd. Sec. 30, Ch. 423, L. 1995.**

Compiler's Comments

1995 Amendment: Chapter 423 inserted (3) concerning amount of refunding bonds. Amendment effective April 13, 1995.

Applicability: Section 53, Ch. 423, L. 1995, provided: "[This act] applies to bonds issued under the provisions of [this act] after [the effective date of this act]." Effective April 13, 1995.

7-7-4305 through 7-7-4310 reserved.

7-7-4311. Procedure to issue refunding general obligation bonds. In order to issue bonds to refund bonds theretofore issued and outstanding, it shall only be necessary for the council, at a regular or duly called special meeting, to pass and adopt a resolution setting forth the facts with regard to the indebtedness to be refunded, showing the reason for issuing such refunding bonds and fixing and determining the details thereof, including whether the bonds will be sold at a private negotiated sale or public sale.

History: **En. Sec. 1, Ch. 160, L. 1931; amd. Sec. 1, Ch. 100, L. 1933; ; re-en. Sec. 5278.1, R.C.M. 1935; amd. Sec. 1, Ch. 12, L. 1937; amd. Sec. 1, Ch. 108, L. 1937; amd. Sec. 1, Ch.**

15, L. 1943; amd. Sec. 1, Ch. 62, L. 1945; amd. Sec. 1, Ch. 413, L. 1973; R.C.M. 1947, 11-2301(part); amd. Sec. 3, Ch. 647, L. 1983.

7-7-4312. Disposition of proceeds of refunding bonds. Whenever bonds are issued for the purpose of funding outstanding warrants or refunding outstanding bonds, it shall be the duty of the city treasurer or town clerk to apply the proceeds derived from the sale of such bonds to the payment of such funded warrants or refunded bonds.

History: En. Sec. 28, Ch. 160, L. 1931; re-en. Sec. 5278.28, R.C.M. 1935; R.C.M. 1947, 11-2328(part).

7-7-4313 through 7-7-4315 reserved.

7-7-4316. Advance refunding bonds. A city or town may issue refunding bonds pursuant to this section to refund outstanding bonds in advance of the date on which such bonds mature or are subject to redemption, provided that proceeds of the refunding bonds, less any accrued interest or premium received upon the sale thereof, are deposited with other funds appropriated to the payment of the outstanding bonds in escrow with a suitable banking institution in or out of the state. Funds so deposited shall be invested in securities which are general obligations of the United States or the principal and interest of which are guaranteed by the United States and which mature or are callable at the option of the holder on such dates and bear interest at such rates and payable on such dates as shall be required to provide funds sufficient, with any cash retained in the escrow account, to pay when due the interest to accrue on each refunded bond to its maturity or redemption date, if called for redemption, and to pay the principal thereof at maturity or upon such redemption date, and to pay any redemption premium. The escrow account shall be irrevocably appropriated to the payment of the principal of and interest and redemption premium, if any, on the refunded bonds. Funds to the credit of the sinking fund account for the payment of the refunded bonds and not required for the payment of principal of or interest thereon due prior to issuance of the refunding bonds may be appropriated by the city or town to the escrow account. The city or town may pay the reasonable costs and expenses of printing the refunding bonds and of establishing and maintaining the escrow account. Bonds refunded pursuant to this part are not to be considered outstanding for purposes of 7-7-4201 or any other debt limitation.

History: En. Sec. 8, Ch. 647, L. 1983.

Cross-References

Counties — advance refunding bonds, 7-7-2316.

Issuance of refunding bonds without an election, 20-9-412.

Part 44

Municipal Revenue Bonds

7-7-4401. Short title. This part may be cited as "The Municipal Revenue Bond Act of 1939".

History: En. Sec. 1, Ch. 126, L. 1939; R.C.M. 1947, 11-2401.

7-7-4402. Definitions. Whenever used in this part, unless a different meaning clearly appears from the context, the following definitions apply:

(1) The term "governing body" shall include bodies and boards, by whatsoever names they may be known, having charge of finances and management of a municipality.

(2) The term "municipality" shall include any city or any town, however organized.

(3) The term "undertaking" shall mean any one or a combination of the following:

(a) water and sewer systems, together with all parts thereof and appurtenances thereto including but not limited to supply and distribution systems, reservoirs, dams, and sewage treatment and disposal works;

(b) public airport construction and public airport building;

(c) convention facilities;

(d) public recreation facilities; and

(e) public parking facilities, solid waste management systems, or other revenue-producing facilities and services authorized in these codes for cities and towns.

History: En. Sec. 2, Ch. 126, L. 1939; amd. Sec. 1, Ch. 42, L. 1949; amd. Sec. 1, Ch. 111, L. 1959; amd. Sec. 1, Ch. 254, L. 1969; R.C.M. 1947, 11-2402; amd. Sec. 5, Ch. 770, L. 1991.

7-7-4403. Interpretation of part. (1) The powers conferred in this part shall be in addition and supplemental to the powers conferred by any other general, special, or local law.

(2) The undertaking may be acquired, purchased, constructed, reconstructed, improved, bettered, and extended and bonds may be issued under this part for said purposes, notwithstanding that any general, special, or local law may provide for the acquisition, purchase, construction, reconstruction, improvement, betterment, and extension of a like undertaking or the issuance of bonds for like purposes and without regard to the requirements, restrictions, limitations, or other provisions contained in any other general, special, or local law, including but not limited to any requirement for the approval by the voters of any municipality.

(3) Insofar as the provisions of this part are inconsistent with the provisions of any other general, special, or local law, the provisions of this part shall be controlling.

History: En. Sec. 13, Ch. 126, L. 1939; R.C.M. 1947, 11-2413.

7-7-4404. Authority to acquire, construct, maintain, and operate various undertakings. In addition to the powers which it may now have, any municipality shall have power under this part to:

(1) construct, acquire by gift, purchase, or the exercise of the right of eminent domain, reconstruct, improve, better, or extend any undertaking, within or without the municipality or partially within or partially without the municipality, and acquire by gift, purchase, or the exercise of the right of eminent domain lands or rights in land or water rights in connection therewith;

(2) operate and maintain any undertaking and furnish the service, facilities, and commodities thereof for its own use and for the use of public and private consumers within or without the territorial boundaries of such municipality; and

(3) prescribe and collect rates, fees, and charges for the services, facilities, and commodities furnished by such undertaking.

History: En. Sec. 3, Ch. 126, L. 1939; amd. Sec. 1, Ch. 52, L. 1949; amd. Sec. 1, Ch. 145, L. 1951; R.C.M. 1947, 11-2403(part).

7-7-4405. Pollution abatement. In addition to the powers which it now may have, any municipality shall have the power under this part to:

(1) enter into cooperative agreements with and accept contributions from industrial establishments relative to the planning, construction, lease or other acquisition, maintenance, and operation of undertakings and apply for and accept grants and loans or any other aid which the United States or any agency thereof may give or make to any political subdivision or agency of this state for undertakings, including all necessary actions preliminary thereto, the purpose of which is to aid in the prevention or abatement of water pollution;

(2) make contracts and execute instruments containing such terms, provisions, and conditions as, in the discretion of the governing body of the municipality, may be necessary, proper, or advisable for the purpose of obtaining such aid;

(3) enter into and perform contracts, whether long-term or short-term, with any industrial establishment for the provision and operation by the municipality of sewer facilities when the governing body of such municipality determines such action to be in the public interest and otherwise essential in order to abate or reduce the pollution of waters caused by discharges of industrial waste by such industrial establishment and to provide for the periodical payment by said industrial establishment to the municipality of an amount at least sufficient, in the determination of such governing body, to compensate the municipality for the cost of providing (including the payment of principal and interest charges, if any) and of operating and maintaining the sewer facilities serving such industrial establishment.

History: En. Sec. 3, Ch. 126, L. 1939; amd. Sec. 1, Ch. 52, L. 1949; amd. Sec. 1, Ch. 145, L. 1951; R.C.M. 1947, 11-2403(part).

7-7-4406. Cooperation among municipalities. (1) Any two or more municipalities, through their respective governing bodies, are hereby authorized and empowered to enter into and perform such contracts and agreements as they may deem proper for or concerning the planning, construction, lease or other acquisition, and the finance of undertakings, in whole or in part, and the maintenance and operation thereof.

(2) Any such municipalities so contracting with each other may also provide in any contract or agreement for a board, commission, or such other body as their governing bodies may deem proper for the supervision and general management of the undertakings and for the operation thereof and may prescribe its powers and duties and fix the compensation of the members thereof.

(3) No municipality shall construct an undertaking wholly or partly within the corporate limits of another municipality except with the consent of the governing body of such other municipality.

History: (1), (2)En. Sec. 3, Ch. 126, L. 1939; amd. Sec. 1, Ch. 52, L. 1949; amd. Sec. 1, Ch. 145, L. 1951; Sec. 11-2403, R.C.M. 1947; (3)En. Sec. 11, Ch. 126, L. 1939; Sec. 11-2411, R.C.M. 1947; R.C.M. 1947, 11-2403(part), 11-2411.

7-7-4407. Role of state agencies. A municipality acting pursuant to this part is not required to obtain any certificate of convenience or necessity, franchise, license, permit, or other authorization from any bureau, board, commission, or other instrumentality of the state in order to acquire, construct, purchase, reconstruct, improve, better, extend, maintain, and operate an undertaking. The supervisory powers and duties of the department of environmental quality apply to projects under this part.

History: En. Sec. 12, Ch. 126, L. 1939; amd. Sec. 106, Ch. 349, L. 1964; R.C.M. 1947, 11-2412; amd. Sec. 23, Ch. 418, L. 1995.

Compiler's Comments

1995 Amendment: Chapter 418 in last sentence substituted "department of environmental quality" for "department of health and environmental sciences"; and made minor changes in style. Amendment effective July 1, 1995.

7-7-4408 through 7-7-4420 reserved.

7-7-4421. Authority to issue revenue bonds. In addition to the powers which it may now have, any municipality shall have power under this part to:

(1) issue its bonds to finance in whole or in part the cost of the acquisition, purchase, construction, reconstruction, improvement, betterment, or extension of any undertaking;

(2) pledge to the punctual payment of said bonds issued under this part or part 45 and interest thereon an amount of the revenues of such undertaking (including improvements, betterments, or extensions thereto thereafter constructed or acquired) or of any part of such undertaking sufficient to pay said bonds and interest as the same shall become due, with such amount consisting of all or any part or portion of such revenue, and create and maintain reasonable reserves therefor.

History: En. Sec. 3, Ch. 126, L. 1939; amd. Sec. 1, Ch. 52, L. 1949; amd. Sec. 1, Ch. 145, L. 1951; R.C.M. 1947, 11-2403(part).

7-7-4422. Determination of cost. The governing body of a municipality, in determining cost for purposes of 7-7-4421, may include:

(1) all costs and estimated costs of the issuance of revenue bonds, including a permissible underwriter's discount, if any;

(2) all engineering, inspection, fiscal, and legal expenses; and

(3) interest estimated to accrue during the construction period and for 6 months after construction on money borrowed or on money that it is estimated will be borrowed pursuant to this part.

History: En. Sec. 3, Ch. 126, L. 1939; amd. Sec. 1, Ch. 52, L. 1949; amd. Sec. 1, Ch. 145, L. 1951; R.C.M. 1947, 11-2403(part); amd. Sec. 31, Ch. 423, L. 1995.

Compiler's Comments

1995 Amendment: Chapter 423 at end of (1) inserted "including a permissible underwriter's discount, if any"; and made minor changes in style. Amendment effective April 13, 1995.

Applicability: Section 53, Ch. 423, L. 1995, provided: "[This act] applies to bonds issued under the provisions of [this act] after [the effective date of this act]." Effective April 13, 1995.

7-7-4423. Nature of revenue bonds. (1) No holder or holders of any bonds issued under this part shall ever have the right to compel any exercise of taxing power of the municipality to pay said bonds or the interest thereon.

(2) Each bond issued under this part shall recite in substance that:

(a) said bond, including interest thereon, is payable from the revenue pledged to the payment thereof; and

(b) said bond does not constitute a debt of the municipality within the meaning of any constitutional or statutory limitation or provision.

History: **En. Sec. 8, Ch. 126, L. 1939; R.C.M. 1947, 11-2408.**

7-7-4424. Undertakings to be self-supporting. (1) The governing body of a municipality issuing bonds pursuant to this part shall prescribe and collect reasonable rates, fees, or charges for the services, facilities, and commodities of the undertaking and shall revise the rates, fees, or charges from time to time whenever necessary so that the undertaking is and remains self-supporting. The property taxes specifically authorized to be levied for the general purpose served by an undertaking or resort taxes approved, levied, and appropriated to an undertaking in compliance with 7-6-4461 through 7-6-4469 constitute revenue of the undertaking and may not result in an undertaking being considered not self-supporting.

(2) The rates, fees, or charges prescribed, along with any appropriated property or resort tax collections, must produce revenue at least sufficient to:

(a) pay when due all bonds and interest on the bonds, the payment of which the revenue has been pledged, charged, or otherwise encumbered, including reserves for the bonds; and

(b) provide for all expenses of operation and maintenance of the undertaking, including reserves.

History: **En. Sec. 9, Ch. 126, L. 1939; R.C.M. 1947, 11-2409; amd. Sec. 32, Ch. 423, L. 1995.**

Compiler's Comments

1995 Amendment: Chapter 423 in (1) inserted second sentence concerning taxes constituting revenue of the undertaking; in (2), after "prescribed", inserted "along with any appropriated property or resort tax collections"; and made minor changes in style. Amendment effective April 13, 1995.

Applicability: Section 53, Ch. 423, L. 1995, provided: "[This act] applies to bonds issued under the provisions of [this act] after [the effective date of this act]." Effective April 13, 1995.

7-7-4425. Use of revenue from undertaking. (1) Any municipality issuing bonds pursuant to this part for the acquisition, purchase, construction, reconstruction, improvement, betterment, or extension of any undertaking shall have the right to appropriate, apply, or extend the revenue of such undertaking for the following purposes:

(a) to pay when due all bonds and interest thereon for the payment of which such revenue is or shall have been pledged, charged, or otherwise encumbered, including reserves therefor;

(b) to provide for all expenses of operation and maintenance of such undertaking, including reserves therefor;

(c) to pay and discharge notes, bonds, or other obligations and interest thereon not issued under this part, for the payment of which the revenue of such undertaking is or shall have been pledged, charged, or encumbered;

(d) to pay and discharge notes, bonds, or other obligations and interest thereon which do not constitute a lien, charge, or encumbrance on the revenue of such undertaking and which shall have been issued for the purpose of financing the acquisition, purchase, construction, reconstruction, improvement, betterment, or extension of such undertaking; and

(e) to provide a reserve for betterments to such undertaking.

(2) Unless and until adequate provision has been made for the foregoing purposes, no municipality shall have the right to transfer the revenue of such undertaking to its general fund.

History: **En. Sec. 10, Ch. 126, L. 1939; R.C.M. 1947, 11-2410.**

7-7-4426. Authorization for undertaking and issuance of bonds. (1) The acquisition, purchase, construction, reconstruction, improvement, betterment, or extension of any undertaking may be authorized under this part.

(2) Bonds may be authorized to be issued under this part by resolution or resolutions of the governing body of the municipality:

(a) without an election; or

(b) when authorized by a majority of the qualified electors voting upon the question at a special election held in conjunction with a regular or primary election, if the governing body in its sole discretion chooses to submit the question to the electorate.

History: **En. Sec. 4, Ch. 126, L. 1939; amd. Sec. 2, Ch. 145, L. 1951; amd. Sec. 2, Ch. 38, L. 1957; amd. Sec. 1, Ch. 52, L. 1963; amd. Sec. 11-106, Ch. 264, L. 1963; amd. Sec. 11, Ch. 158, L. 1971; amd. Sec. 5, Ch. 234, L. 1971; amd. Sec. 4, Ch. 413, L. 1973; R.C.M. 1947, 11-2404(part); amd. Sec. 36, Ch. 387, L. 1995.**

7-7-4427. Special election on question of issuing bonds. (1) When the governing body has chosen to submit the question of issuing bonds to the electorate, the special election must be held in conjunction with a regular or primary election and must be noticed and conducted as provided for municipal general obligation bonds in chapter 7, part 42.

(2) The special election must be held not later than the next municipal election held after the council or governing body of the municipality has by resolution or resolutions approved the acquisition, purchase, construction, reconstruction, improvement, betterment, or extension of any undertaking as provided in this part and ordered the special election.

History: **En. Sec. 4, Ch. 126, L. 1939; amd. Sec. 2, Ch. 145, L. 1951; amd. Sec. 2, Ch. 38, L. 1957; amd. Sec. 1, Ch. 52, L. 1963; amd. Sec. 11-106, Ch. 264, L. 1963; amd. Sec. 11, Ch. 158, L. 1971; amd. Sec. 5, Ch. 234, L. 1971; amd. Sec. 4, Ch. 413, L. 1973; R.C.M. 1947, 11-2404(part); amd. Sec. 40, Ch. 575, L. 1981; amd. Sec. 37, Ch. 387, L. 1995.**

Compiler's Comments

1995 Amendment: Chapter 387 in (1) inserted "held in conjunction with a regular or primary election"; and made minor changes in style.

7-7-4428. Covenants in resolution authorizing issuance of bonds. Any resolution or resolutions authorizing the issuance of bonds under this part may contain covenants as to:

(1) the purpose or purposes to which the proceeds of sale of the bonds may be applied and the disposition of the proceeds;

(2) the use and disposition of the revenue of the undertaking for which the bonds are to be issued, including the creation and maintenance of reserves and including the pledge or appropriation of all or a portion of the property and resort tax revenue referred to in 7-7-4424;

(3) the transfer, from the general fund of the municipality to the account or accounts of the undertaking, of an amount equal to the cost of furnishing the municipality or any of its departments, boards, or agencies with the services, facilities, or commodities of the undertaking;

(4) the issuance of other or additional bonds payable from the revenue of the undertaking;

(5) the operation and maintenance of the undertaking;

(6) the insurance to be carried on the undertaking and the use and disposition of insurance money;

(7) books of account and the inspection and audit of the books; and

(8) the terms and conditions upon which the holders or trustees of the bonds or any proportion of the bonds are entitled to the appointment of a receiver by the district court having jurisdiction. The receiver may:

(a) enter and take possession of the undertaking;

(b) operate and maintain the undertaking;

(c) prescribe rates, fees, or charges, subject to the approval of the public service commission; and

(d) collect, receive, and apply all revenue thereafter arising from the undertaking in the same manner as the municipality itself might do.

History: En. Sec. 5, Ch. 126, L. 1939; R.C.M. 1947, 11-2405(part); amd. Sec. 33, Ch. 423, L. 1995.

Compiler's Comments

1995 Amendment: Chapter 423 in (2), at end, inserted "and including the pledge or appropriation of all or a portion of the property and resort tax revenue referred to in 7-7-4424"; and made minor changes in style. Amendment effective April 13, 1995.

Applicability: Section 53, Ch. 423, L. 1995, provided: "[This act] applies to bonds issued under the provisions of [this act] after [the effective date of this act]." Effective April 13, 1995.

7-7-4429. Remedies. The provisions of this part and any such resolution or resolutions shall be enforceable by any bondholder in any court of competent jurisdiction by mandamus or other appropriate suit, action, or proceeding.

History: En. Sec. 5, Ch. 126, L. 1939; R.C.M. 1947, 11-2405(part).

Cross-References

Writ of Mandate, Title 27, ch. 26.

7-7-4430. Presumptions of validity of bonds. (1) Said bonds bearing the signatures of officers in office on the date of the signing thereof shall be valid and binding obligations, notwithstanding that before the delivery thereof and payment therefor, any or all the persons whose signatures appear thereon shall have ceased to be officers of the municipality issuing the same.

(2) The validity of said bonds shall not be dependent on or affected by the validity or regularity of any proceedings relating to the acquisition, purchase, construction, reconstruction, improvement, betterment, or extension of the undertaking for which said bonds are issued.

(3) The resolution authorizing said bonds may provide that the bonds shall contain a recital that they are issued pursuant to this part, which recital shall be conclusive evidence of their validity and of the regularity of their issuance.

History: En. Sec. 6, Ch. 126, L. 1939; R.C.M. 1947, 11-2406.

7-7-4431. Liens arising from bonds. The resolution or resolutions shall specify and define the revenues or portion thereof which are appropriated and pledged for the security and payment of the bond principal and interest and the relative security of liens on the revenues in favor of bonds of one or more series or issues, whether issued concurrently or at different times.

History: En. Sec. 7, Ch. 126, L. 1939; amd. Sec. 2, Ch. 52, L. 1949; R.C.M. 1947, 11-2407.

7-7-4432. Details relating to revenue bonds. (1) Bonds authorized to be issued under this part:

(a) must bear interest at a rate or rates not exceeding the limitation of 17-5-102;

(b) may be issued in one or more series;

(c) may bear a date or dates;

(d) may mature at a time or times not exceeding 40 years from their respective dates of issue;

(e) may be payable in a place or places;

(f) may carry registration privileges;

(g) may be subject to terms of redemption;

(h) may be executed;

(i) may contain terms, covenants, and conditions; and

(j) may be in coupon or registered form, as provided by the initial resolution or subsequent resolutions.

(2) The governing body may fix the minimum price for the bonds in an amount less than the principal amount of the bonds but not less than 97% of the principal amount if it determines that a sale at that price is in the best interests of the undertaking.

History: En. Sec. 4, Ch. 126, L. 1939; amd. Sec. 2, Ch. 145, L. 1951; amd. Sec. 2, Ch. 38, L. 1957; amd. Sec. 1, Ch. 52, L. 1963; amd. Sec. 11-106, Ch. 264, L. 1963; amd. Sec. 11, Ch. 158, L. 1971; amd. Sec. 5, Ch. 234, L. 1971; amd. Sec. 4, Ch. 413, L. 1973; R.C.M. 1947, 11-2404(part); amd. Sec. 4, Ch. 500, L. 1981; amd. Sec. 1, Ch. 11, L. 1983; amd. Sec. 34, Ch. 423, L. 1995.

Compiler's Comments

1995 Amendment: Chapter 423 at end of (1)(a) deleted "payable semiannually"; inserted (2) concerning minimum price for bonds; and made minor changes in style. Amendment effective April 13, 1995.

Applicability: Section 53, Ch. 423, L. 1995, provided: "[This act] applies to bonds issued under the provisions of [this act] after [the effective date of this act]." Effective April 13, 1995.

7-7-4433. Sale of bonds. (1) Bonds authorized to be issued under this part must be sold at a price not less than that prescribed by the governing body, plus interest to the date of delivery of the bonds.

(2) (a) The bonds may be sold at private sale to the United States or the state of Montana or any agency, instrumentality, or corporation of the United States or the state.

(b) Unless sold to the United States or the state of Montana or an agency, instrumentality, or corporation of the United States or the state, the bonds must be sold at public sale after notice of the sale.

History: En. Sec. 4, Ch. 126, L. 1939; amd. Sec. 2, Ch. 145, L. 1951; amd. Sec. 2, Ch. 38, L. 1957; amd. Sec. 1, Ch. 52, L. 1963; amd. Sec. 11-106, Ch. 264, L. 1963; amd. Sec. 11, Ch. 158, L. 1971; amd. Sec. 5, Ch. 234, L. 1971; amd. Sec. 4, Ch. 413, L. 1973; R.C.M. 1947, 11-2404(part); amd. Sec. 7, Ch. 705, L. 1983; amd. Sec. 35, Ch. 423, L. 1995.

Compiler's Comments

1995 Amendment: Chapter 423 at end of (1) substituted "a price not less than that prescribed by the governing body, plus interest to the date of delivery of the bonds" for "not less than par"; and made minor changes in style. Amendment effective April 13, 1995.

Applicability: Section 53, Ch. 423, L. 1995, provided: "[This act] applies to bonds issued under the provisions of [this act] after [the effective date of this act]." Effective April 13, 1995.

7-7-4434. Notice of sale of bonds. The notice of sale of bonds required by 7-7-4433(2)(b) must be published once at least 5 days prior to the sale in a newspaper of general circulation in the state, and the governing body may publish the notice or summary of the notice in a financial newspaper published in the city of New York, Chicago, or San Francisco.

History: En. Sec. 4, Ch. 126, L. 1939; amd. Sec. 2, Ch. 145, L. 1951; amd. Sec. 2, Ch. 38, L. 1957; amd. Sec. 1, Ch. 52, L. 1963; amd. Sec. 11-106, Ch. 264, L. 1963; amd. Sec. 11, Ch. 158, L. 1971; amd. Sec. 5, Ch. 234, L. 1971; amd. Sec. 4, Ch. 413, L. 1973; R.C.M. 1947, 11-2404(part); amd. Sec. 36, Ch. 423, L. 1995.

Compiler's Comments

1995 Amendment: Chapter 423 at beginning deleted exception clause referring to subsection (2) and substituted "newspaper of general circulation in the state and the governing body may publish the notice or summary of the notice" for "newspaper circulating in the municipality"; deleted (2) that read: "(2) In the event the bond issue is in an amount of less than $150,000, the bond issue shall be advertised at least 5 days prior to such sale:

(a) in daily newspapers circulating in Montana cities of 10,000 population or over, in lieu of advertising in a financial newspaper in New York, Chicago, or San Francisco; and

(b) also in a newspaper as specified in part 24 of chapter 5 if that newspaper is different from the daily newspapers circulating in Montana cities of 10,000 population or over"; and made minor changes in style. Amendment effective April 13, 1995.

Applicability: Section 53, Ch. 423, L. 1995, provided: "[This act] applies to bonds issued under the provisions of [this act] after [the effective date of this act]." Effective April 13, 1995.

7-7-4435. Interim receipts or certificates. Pending the preparation of the definitive bonds, interim receipts or certificates, in such form and with such provisions as the governing body may determine, may be issued to the purchaser or purchasers of bonds sold pursuant to this part. Said bonds and interim receipts or certificates shall be fully negotiable, as provided by the Uniform Commercial Code—Investment Securities.

History: En. Sec. 4, Ch. 126, L. 1939; amd. Sec. 2, Ch. 145, L. 1951; amd. Sec. 2, Ch. 38, L. 1957; amd. Sec. 1, Ch. 52, L. 1963; amd. Sec. 11-106, Ch. 264, L. 1963; amd. Sec. 11, Ch. 158, L. 1971; amd. Sec. 5, Ch. 234, L. 1971; amd. Sec. 4, Ch. 413, L. 1973; R.C.M. 1947, 11-2404(part).

Cross-References

Uniform Commercial Code — investment securities, Title 30, ch. 8.

Part 45

Municipal Refunding Revenue Bonds
Option 1

7-7-4501. Authority to issue refunding revenue bonds. (1) In addition to the powers which it now may have, any municipality shall have the power under this part to refund bonds issued for any of the purposes listed in 7-7-4421(1), whether issued under authority of part 45 or of any other applicable law.

(2) Refunding revenue bonds issued as authorized in this section shall be governed by all of the provisions of part 44, except 7-7-4433 and 7-7-4434, as fully as bonds issued for the initial financing of any undertaking and by the further provisions of this part.

(3) Bonds may be issued to refund interest as well as principal actually due and payable if the revenues pledged therefor are not sufficient, but not to refund any bonds or interest due which can be paid from revenues then on hand.

History: (1)En. Sec. 3, Ch. 126, L. 1939; amd. Sec. 1, Ch. 52, L. 1949; amd. Sec. 1, Ch. 145, L. 1951; Sec. 11-2403, R.C.M. 1947; (2), (3)En. 11-2414 by Sec. 1, Ch. 50, L. 1936; Sec. 11-2414, R.C.M. 1947; R.C.M. 1947, 11-2403(part), 11-2414(part); amd. Sec. 5, Ch. 647, L. 1983.

7-7-4502. Interest rates on refunding revenue bonds. (1) Except as provided in subsection (2), refunding bonds may not be issued unless their average annual interest rate, computed to their stated maturity dates and excluding any premium from such computation, is at least 3/8 of 1% less than the average annual interest rate on the bonds refunded thereby, computed to their respective stated maturity dates.

(2) Refunding bonds may bear interest at a rate lower or higher than the bonds refunded thereby if:

(a) they are issued to refund matured principal or interest for the payment of which revenues on hand are not sufficient;

(b) the refunding bonds are combined with an issue of new bonds for reconstruction, improvement, betterment, or extension and the lien of such new bonds upon the revenues of the undertaking must be junior and subordinate to the lien of the outstanding bonds refunded, under the terms of the ordinances or resolutions authorizing the outstanding bonds as applied to circumstances existing on the date of refunding; or

(c) the issuance of the refunding bonds, including the total costs of refunding the bonds, results in a reduction of total debt service cost to the municipality.

History: En. 11-2414 by Sec. 1, Ch. 50, L. 1936; R.C.M. 1947, 11-2414(3); amd. Sec. 3, Ch. 54, L. 1989.

7-7-4503. Exchange or sale of refunding revenue bonds. (1) Refunding revenue bonds may, with the consent of the holders of the bonds to be refunded thereby, be exchanged at par plus accrued interest for all or part of such bonds or may be sold at a private negotiated sale or at a public sale conducted pursuant to the provisions of 7-7-4433 and 7-7-4434 at a price not less than par plus accrued interest.

(2) Nothing herein shall require the holder of any outstanding bond to accept payment thereof or the delivery of a refunding bond in exchange therefor except in accordance with the terms of such outstanding bond.

History: En. 11-2414 by Sec. 1, Ch. 50, L. 1936; R.C.M. 1947, 11-2414(part); amd. Sec. 4, Ch. 647, L. 1983.

7-7-4504. Deposit of proceeds of refunding revenue bonds in escrow. (1) In any case where refunding bonds are issued and sold 6 months or more before the earliest date on which all bonds refunded thereby mature or are prepayable in accordance with their terms, the proceeds of the refunding bonds, including any premium and accrued interest, shall be deposited in escrow with a suitable bank or trust company. The bank or trust company shall:

(a) have its principal place of business within or without the state;

(b) be a member of the federal reserve system; and

(c) have a combined capital and surplus not less than $1 million.

(2) The proceeds deposited in escrow shall be invested in such amount and in securities maturing on such dates and bearing interest at such rates as shall be required to provide funds sufficient to pay, when due, the interest to accrue on each bond refunded to its maturity or, if it is prepayable, to the earliest prior

date upon which such bond may be called for redemption and to pay and redeem the principal amount of each such bond at maturity or, if prepayable, at its earliest redemption date and any premium required for redemption on such date. The resolution or ordinance authorizing the refunding bonds shall irrevocably appropriate for these purposes the escrow fund and all income therefrom and shall provide for the call of all prepayable bonds in accordance with their terms. The securities to be purchased with the escrow fund shall be limited to general obligations of the United States, securities whose principal and interest payments are guaranteed by the United States, and securities issued by the following United States government agencies: banks for cooperatives, federal home loan banks, federal intermediate credit banks, federal land banks, and the federal national mortgage association. Such securities shall be purchased simultaneously with the delivery of the refunding bonds.

History: En. 11-2414 by Sec. 1, Ch. 50, L. 1936; R.C.M. 1947, 11-2414(4).

7-7-4505. Use of excess revenues and pledged reserves. (1) Revenues and other funds on hand in excess of amounts pledged by ordinances and resolutions authorizing outstanding bonds for the payment of principal and interest currently due thereon and reserves securing such payment may be used to pay the expenses incurred by the municipality for the purpose of such refunding, including without limitation the cost of advertising and printing refunding bonds, legal and financial advice and assistance in connection therewith, and the reasonable and customary charges of escrow agents and paying agents.

(2) Revenues and other funds on hand, including reserves pledged for the payment and security of outstanding revenue bonds, may be deposited in an escrow fund created for the retirement of such bonds and may be invested and disbursed, as provided in 7-7-4504, to the extent consistent with the ordinances or resolutions authorizing such outstanding bonds.

History: En. 11-2414 by Sec. 1, Ch. 50, L. 1936; R.C.M. 1947, 11-2414(5).

Part 46

Municipal Refunding Revenue Bonds Option 2

7-7-4601. Short title. This part may be cited as "The Revenue Bond Refinancing Act of 1937".

History: En. Sec. 1, Ch. 121, L. 1937; R.C.M. 1947, 79-1901.

7-7-4602. Definitions. As used in this part, unless the context indicates otherwise, the following definitions apply:

(1) "Enterprise" means any work, undertaking, or project which the municipality is authorized to construct and from which the municipality derives revenues, for the refinancing or the refinancing and improving of which enterprise refunding bonds are issued under this part; and such enterprise includes all improvements, betterments, extensions, and replacements thereto and all appurtenances, facilities, lands, rights in land, water rights, franchises, and structures in connection therewith or incidental thereto.

(2) "Federal agency" means the United States, the president of the United States, the federal emergency administrator of public works, or any agency,

instrumentality, or corporation of the United States designated or created by or pursuant to any act or joint resolution of the congress of the United States or directly or indirectly owned or controlled by the United States.

(3) "Governing body" means, in the case of a city or town, the council, commission, or other body, board, officer, or officers having charge of the finances thereof.

(4) "Holder of bonds" or "bondholder" (or any similar term) means any person who is the bearer of any outstanding refunding bond, registered to bearer or not registered, or the registered owner of any such outstanding bond which is at the time registered other than to bearer.

(5) "Improving" means reconstructing, replacing, extending, repairing, bettering, equipping, developing, embellishing, or improving or any one or more of the foregoing.

(6) "Law" means any act or statute (general, special, or local) of this state, including without being limited to the charter of any municipality.

(7) "Municipality" means any city or town of this state.

(8) "Refinancing" means funding, refunding, paying, or discharging, by means of refunding bonds or the proceeds received from the sale thereof, all or any part of any notes, bonds, or other obligations issued to finance or to aid in financing the acquisition, construction, or improving of an enterprise and payable solely from all or any part of the revenues thereof, including interest thereon in arrears or about to become due, whether or not represented by coupons or interest certificates.

(9) "Refunding bonds" means notes, bonds, certificates, or other obligations of a municipality issued pursuant to this part or pursuant to any other law as supplemented by or in conjunction with this part.

(10) "Revenues" means all fees, tolls, rates, rentals, and charges to be levied and collected in connection with and all other income and receipts of whatever kind or character derived by the municipality from the operation of any enterprise or arising from any enterprise.

History: En. Sec. 2, Ch. 121, L. 1937; R.C.M. 1947, 79-1902(part); amd. Sec. 10, Ch. 212, L. 1979.

7-7-4603. Scope of part. (1) This part constitutes full and complete authority for the issuance of refunding bonds. No procedure or proceedings, publications, notices, consents, approvals, orders, acts, or things by any governing body of any municipality or any board, officer, commission, department, agency, or instrumentality of the state or any municipality shall be required to issue any refunding bonds or to do any act or perform any thing under this part except as may be prescribed in this part.

(2) The powers conferred by this part shall be in addition and supplemental to and not in substitution for and the limitations imposed by this part shall not affect the powers conferred by any other law.

(3) This part is remedial in nature and shall be liberally construed.

History: En. Sec. 16, Ch. 121, L. 1937; R.C.M. 1947, 79-1916.

7-7-4604. Interpretation of part. Nothing in this part shall in any way be deemed to:

(1) alter the terms of any agreements made with the holders of any outstanding notes, bonds, or other obligations of the municipality;

(2) authorize the municipality to alter the terms of any such agreements;

(3) impair or authorize the municipality to impair the rights and remedies of any creditors of the municipality;

(4) authorize any municipality to do anything in any manner or for any purpose which would result in the creation or incurring of a debt or indebtedness or the issuance of any instrument which would constitute a bond or debt within the meaning of any provision, limitation, or restriction of the constitution relating to the creation or incurring of a debt or indebtedness or the issuance of an instrument constituting a debt.

History: En. Sec. 8, Ch. 121, L. 1937; R.C.M. 1947, 79-1908(4), (5).

7-7-4605. Authorization for refinancing and refunding revenue bonds. Any municipality shall have power and is hereby authorized to refinance or to refinance and improve any enterprise and for such purpose or purposes, to borrow money and issue refunding bonds from time to time.

History: En. Sec. 3, Ch. 121, L. 1937; R.C.M. 1947, 79-1903.

7-7-4606. Nature of refunding revenue bonds. (1) No recourse shall be had for the payment of the refunding bonds, interest thereon, or any part thereof against the general fund of any municipality, nor shall the credit or taxing power of any municipality be deemed to be pledged thereto.

(2) The refunding bonds and interest thereon shall not be a debt of the municipality or a charge, lien, or encumbrance, legal or equitable, upon any property of the municipality or upon any income, receipts, or revenues of the municipality, other than such of the revenues of the enterprise as shall have been pledged to the payment thereof. Every refunding bond shall recite in substance that said bond, including interest thereon, is payable solely from the revenues pledged to the payment thereof and that the municipality is under no obligation to pay the same except from said revenues.

History: En. Sec. 9, Ch. 121, L. 1937; R.C.M. 1947, 79-1909.

7-7-4607. Exemption from certain taxes for refunding revenue bonds. The refunding bonds and the income therefrom shall be exempt from taxation except inheritance, estate, and transfer taxes.

History: En. Sec. 10, Ch. 121, L. 1937; R.C.M. 1947, 79-1910.

Cross-References

Inheritance and estate taxes, Title 72, ch. 16.

7-7-4608. Refunding revenue bonds to be fully negotiable. Notwithstanding the form or tenor thereof and in the absence of an express recital on the face thereof that the bond is nonnegotiable, all refunding bonds shall at all times be and shall be treated as fully negotiable within the meaning of and for the purposes of the Uniform Commercial Code—Investment Securities.

History: En. Sec. 5, Ch. 121, L. 1937; amd. Sec. 11-153, Ch. 264, L. 1963; R.C.M. 1947, 79-1905(part).

Cross-References

Uniform Commercial Code — investment securities, Title 30, ch. 8.

7-7-4609. Presumptions of validity of refunding revenue bonds. (1) Refunding bonds bearing the signatures of officers of the municipality in office on the date of the signing thereof shall be valid and binding obligations of the municipality for all purposes, notwithstanding that before the delivery thereof, any or all of the persons whose signatures appear thereon shall have ceased to be officers of the municipality, the same as if such persons had continued to be officers of the municipality until after the delivery thereof.

(2) The validity of the authorization and issuance of the refunding bonds shall not be dependent on or affected in any way by proceedings taken for the improving of any enterprise for the refinancing and improving of which the refunding bonds are to be issued or by contracts made in connection with the improving of any such enterprise.

(3) Any resolution authorizing refunding bonds may provide that any such refunding bond may contain a recital that such refunding bond is issued pursuant to this part, and any refunding bond containing such recital under authority of any such resolution shall be conclusively deemed to be valid and to have been issued in conformity with the provisions of this part.

History: En. Sec. 6, Ch. 121, L. 1937; R.C.M. 1947, 79-1906.

7-7-4610. Details relating to refunding revenue bonds. The refunding bonds may, as provided by resolution of the governing body of the municipality:

(1) be issued in one or more series, bear such date or dates, and mature at such time or times, not exceeding the period of usefulness of the enterprise, as determined by the governing body in its discretion, and, in any event, not exceeding 40 years from their respective dates;

(2) bear interest at such rate or rates not exceeding the maximum rate of interest borne by the notes, bonds, or other obligations refinanced thereby, except that refunding bonds may bear interest in excess of the rate on the refunded bonds if the issuance of the refunding bonds, including the total costs of refunding the bonds, results in a reduction of total debt service cost to the municipality;

(3) be in such denomination or denominations and be in such form, either coupon or registered;

(4) carry such registration and conversion privileges;

(5) be executed in such manner;

(6) be payable in such medium of payment and at such place or places;

(7) be subject to such terms of redemption, with or without a premium;

(8) be declared or become due before the maturity date thereof;

(9) provide for the replacement of mutilated, destroyed, stolen, or lost bonds;

(10) be authenticated in such manner and upon compliance with such conditions; and

(11) contain such other terms and covenants.

History: En. Sec. 5, Ch. 121, L. 1937; amd. Sec. 11-153, Ch. 264, L. 1963; R.C.M. 1947, 79-1905(part); amd. Sec. 4, Ch. 54, L. 1989.

7-7-4611 through 7-7-4620 reserved.

7-7-4621. Resolution for issuance of refunding revenue bonds. (1) The refunding bonds shall be authorized by resolution of the governing body of the municipality. Such resolution may be adopted at a regular or special meeting and at the same meeting at which they are introduced by a majority of all the members of the governing body then in office. Such resolution shall take effect immediately upon the adoption thereof.

(2) No other proceedings or procedure of any character whatever shall be required for the issuance of refunding bonds by the municipality.

History: En. Sec. 4, Ch. 121, L. 1937; R.C.M. 1947, 79-1904.

7-7-4622. Permissible covenants for refunding revenue bonds. (1) The governing body of any municipality shall have power, in addition to the other powers conferred by this part, to insert provisions in any resolution authorizing the issuance of refunding bonds, which shall be a part of the contract with the holders of the refunding bonds, as to:

(a) limitations on the purpose to which the proceeds of sale of any issue of refunding bonds or any notes, bonds, or other obligations then or thereafter to be issued to finance the improving of the enterprise may be applied;

(b) limitations on the issuance of additional refunding bonds or additional notes, bonds, or other obligations to finance the improving of the enterprise and on the lien thereof;

(c) limitations on the right of the municipality or its governing body to restrict and regulate the use of the enterprise;

(d) the amount and kind of insurance to be maintained on the enterprise and the use and disposition of insurance money;

(e) pledging all or any part of the revenues of the enterprise to which its right then exists or the right to which may thereafter come into existence;

(f) covenanting against pledging all or any part of the revenues of the enterprise to which its right then exists or the right to which may thereafter come into existence;

(g) events of default and terms and conditions upon which any or all of the refunding bonds shall become or may be declared due before maturity and as to the terms and conditions upon which such declaration and its consequences may be waived;

(h) the rights, liabilities, powers, and duties arising upon the breach by it of any covenants, conditions, or obligations;

(i) the vesting in a trustee or trustees of the right to enforce any covenants made to secure, to pay, or in relation to the refunding bonds, as to the powers and duties of such trustee or trustees and the limitation of liabilities thereof, and as to the terms and conditions upon which the holders of the refunding bonds or any proportion or percentage of them may enforce any covenants made under this part or duties imposed hereby;

(j) a procedure by which the terms of any resolution authorizing refunding bonds or any other contract with bondholders, including but not limited to an indenture of trust or similar instrument, may be amended or abrogated and as to the amount of refunding bonds the holders of which must consent thereto and the manner in which such consent may be given;

(k) the execution of all instruments necessary or convenient in the exercise of the powers granted by this part or in the performance of the duties of the municipality and the officers, agents, and employees thereof;

(l) refraining from pledging or in any manner whatever claiming or taking the benefit or advantage of any stay or extension law whenever enacted or at any time hereafter in force which may affect the duties or covenants of the municipality in relation to the refunding bonds, the performance thereof, or the lien of such refunding bonds;

(m) the purchase out of any funds available therefor, including but not limited to the proceeds of refunding bonds, of any outstanding notes, bonds, or obligations, including but not limited to refunding bonds, and the price or prices at which and the manner in which such purchases may be made;

(n) any other acts and things as may be necessary or convenient or desirable in order to secure the refunding bonds or as may tend to make the refunding bonds more marketable.

(2) Nothing in this section shall be construed to authorize any municipality to make any covenants, to perform any act, or to do anything which shall require the expenditure in any manner or for any purpose by the municipality of any funds other than revenues received or receivable from the enterprise.

History: En. Sec. 13, Ch. 121, L. 1937; R.C.M. 1947, 79-1913.

7-7-4623. Security for refunding revenue bonds. (1) The refunding bonds shall be special obligations of the municipality and shall be payable from and secured by a lien upon the revenues of the enterprise, as shall be more fully described in the resolution of the governing body authorizing the issuance of the refunding bonds. Subject to the constitution of the state of Montana and to the prior or superior rights of any person, any municipality shall have power, by resolution of its governing body, to pledge and assign for the security of the refunding bonds all or any part of the gross or the net revenues of such enterprise.

(2) (a) As additional security for any issue of refunding bonds hereunder or any part thereof, any municipality shall have power and is hereby authorized, by resolution of its governing body, to confer upon the holders of the refunding bonds all rights, powers, and remedies which said holders would be entitled to if they were the owners and had possession of the notes, bonds, or other obligations for the refinancing of which such refunding bonds shall have been issued, including but not limited to the preservation of the lien of such notes, bonds, or other obligations without extinguishment, impairment, or diminution thereof.

(b) In the event any municipality exercises the power conferred by this subsection:

(i) each refunding bond shall contain a recital to the effect that the holder thereof has been granted the additional security provided by this subsection; and

(ii) each note, bond, certificate, or other obligation of the municipality to be refinanced by any such refunding bonds shall be kept intact and shall not be canceled or destroyed until the refunding bonds and interest thereon have been finally paid and discharged but shall be stamped with a legend to the effect that such note, bond, certificate, or other obligation has been refunded pursuant to the Revenue Bond Refinancing Act of 1937.

(3) All refunding bonds of the same issue shall be equally and ratably secured, without priority by reason of number or date of bond, of sale, of execution, or of delivery, by a lien upon the revenues of the enterprise in accordance with the provisions of this section and the resolution authorizing the issuance of such refunding bonds.

History: **En. Sec. 8, Ch. 121, L. 1937; R.C.M. 1947, 79-1908(1) thru (3).**

7-7-4624. Use of fiscal agent. Any municipality shall have power, in connection with the issuance of refunding bonds:

(1) to appoint a fiscal agent;

(2) to provide for the powers, duties, and functions and compensation of such fiscal agent;

(3) to limit the liabilities of such fiscal agent;

(4) to prescribe a method for the resignation, removal, merger, or consolidation of such fiscal agent and the appointment of a successor fiscal agent and the transfer of rights and properties to such successor fiscal agent.

History: **En. Sec. 11, Ch. 121, L. 1937; R.C.M. 1947, 79-1911.**

7-7-4625. Sale or exchange of refunding revenue bonds. (1) The refunding bonds may be sold or exchanged in installments at different times, or an entire issue or series may be sold or exchanged at one time. Any issue or series of refunding bonds may be exchanged in part or sold in part in installments at different times or at one time.

(2) The refunding bonds may be sold or exchanged at any time on, before, or after the maturity of any of the outstanding notes, bonds, certificates, or other obligations to be refinanced thereby.

History: **En. Sec. 7, Ch. 121, L. 1937; R.C.M. 1947, 79-1907(1).**

7-7-4626. Details relating to sales of refunding revenue bonds. If the governing body determines to sell any refunding bonds, such refunding bonds shall be sold at not less than par, at public or private sale, and in such manner and upon such terms as the governing body shall deem best for the interests of the municipality.

History: **En. Sec. 7, Ch. 121, L. 1937; R.C.M. 1947, 79-1907(3).**

7-7-4627. Details relating to exchanges of refunding revenue bonds. (1) If the governing body determines to exchange any refunding bonds, such refunding bonds may be exchanged privately for and in payment and discharge of any of the outstanding notes, bonds, or other obligations of the municipality issued to finance or to aid in financing the acquisition, construction, improving, refinancing, or improving and refinancing of an enterprise.

(2) The refunding bonds may be exchanged for a like or greater principal amount of such notes, bonds, or other obligations of the municipality, except that the principal amount of the refunding bonds may exceed the principal amount of such outstanding notes, bonds, or other obligations to the extent necessary or advisable, in the discretion of the governing body, to fund interest in arrears or about to become due.

(3) The holder or holders of such outstanding notes, bonds, or other obligations need not pay accrued interest on the refunding bonds to be delivered in exchange therefor if and to the extent that interest is due or accrued and unpaid on such outstanding notes, bonds, or other obligations to be surrendered.

History: **En. Sec. 7, Ch. 121, L. 1937; R.C.M. 1947, 79-1907(2).**

7-7-4628. Payment of bonds. (1) In order that the payment of the refunding bonds and interest thereon shall be adequately secured, any municipality issuing refunding bonds pursuant to this part and the proper officers, agents, and employees thereof are hereby directed and it shall be the mandatory duty of such officers, agents, and employees under this part and it shall further be of the essence of the contract of such municipality with the bondholders, at all times:

(a) to pay or cause to be paid punctually the principal of every refunding bond and the interest thereon on the date or dates and at the place or places and in the manner and out of the funds mentioned in such refunding bonds and in the coupons thereto appertaining and in accordance with the resolution authorizing their issuance;

(b) to preserve and protect the security of the refunding bonds and the rights of the holders thereof and warrant and defend such rights against all claims and demands of all persons whomsoever;

(c) to hold in trust the revenues pledged to the payment of the refunding bonds for the benefit of the holders of the refunding bonds and to apply such revenues only as provided by the resolution authorizing the issuance of the refunding bonds, or if such resolution shall thereafter be modified in the manner provided therein or herein, only as provided in such resolution as modified.

(2) None of the foregoing duties shall be construed to require the expenditure in any manner or for any purpose by the municipality of any funds other than revenues received or receivable from the enterprise.

History: **En. Sec. 12, Ch. 121, L. 1937; R.C.M. 1947, 79-1912(1), (a), (d), (f), (2).**

7-7-4629. Management of enterprise. (1) In order that the payment of the refunding bonds and interest thereon shall be adequately secured, any municipality issuing refunding bonds pursuant to this part and the proper officers, agents, and employees thereof are hereby directed and it shall be the mandatory duty of such officers, agents, and employees under this part and it shall further be of the essence of the contract of such municipality with the bondholders, at all times:

(a) to operate the enterprise in an efficient and economical manner and establish, levy, maintain, and collect such fees, tolls, rentals, rates, and other charges in connection therewith as may be necessary or proper, which fees, tolls, rates, rentals, and other charges shall be at least sufficient, after making due and reasonable allowances for contingencies and for a margin of error in the estimates:

(i) to pay all current expenses of operation, maintenance, and repair of such enterprise;

(ii) to pay the interest on and principal of the refunding bonds as the same shall become due and payable;

(iii) to comply in all respects with the terms of the resolution authorizing the issuance of refunding bonds or any other contract or agreement with the holders of the refunding bonds; and

(iv) to meet any other obligations of the municipality which are charges, liens, or encumbrances upon the revenues of such enterprise;

(b) to operate, maintain, preserve, and keep or cause to be operated, maintained, preserved, and kept the enterprise and every part and parcel thereof in good repair, working order, and condition;

(c) to pay and discharge or cause to be paid or discharged any and all lawful claims for labor, materials, and supplies which, if unpaid, might by law become a lien or charge upon the revenues or any part thereof prior or superior to the lien of the refunding bonds or which might impair the security of the refunding bonds, to the end that the priority and security of the refunding bonds shall be fully preserved and protected;

(d) to keep proper books of record and accounts of the enterprise (separate from all other records and accounts) in which complete and correct entries shall be made of all transactions relating to the enterprise or any part thereof and which, together with all other books and papers of the municipality, shall at all times be subject to the inspection of the holder or holders of not less than 10% of the refunding bonds then outstanding or his or their representatives duly authorized in writing.

(2) None of the foregoing duties shall be construed to require the expenditure in any manner or for any purpose by the municipality of any funds other than revenues received or receivable from the enterprise.

History: En. Sec. 12, Ch. 121, L. 1937; R.C.M. 1947, 79-1912(1), (b), (c), (e), (g), (2).

7-7-4630. Right to receivership upon default. (1) Any holder of refunding bonds or trustee therefor shall have the right to apply in an appropriate judicial proceeding to the district court or any court of competent jurisdiction for the appointment of a receiver of the enterprise, whether or not all refunding bonds have been declared due and payable and whether or not such holder or trustee therefor is seeking or has sought to enforce any other right or exercise any remedy in connection with such refunding bonds:

(a) in the event that the municipality shall default in the payment of the principal or interest on any of the refunding bonds after the same shall become due, whether at maturity or upon call for redemption, and such default shall continue for a period of 30 days; or

(b) in the event that the municipality or the governing body or officers, agents, or employees thereof shall fail or refuse to comply with the provisions of this part or shall default in any agreement made with the holders of the refunding bonds.

(2) Upon such application, the district court may appoint and if the application is made by the holders of 25% in principal amount of such refunding bonds then outstanding or any trustee for holders of such refunding bonds in such principal amount shall appoint a receiver of the enterprise.

History: En. Sec. 14, Ch. 121, L. 1937; R.C.M. 1947, 79-1914(1).

7-7-4631. Role of receiver. (1) The receiver appointed pursuant to 7-7-4630 shall forthwith, directly or by his agents and attorneys, enter into and upon and take possession of the enterprise and each and every part thereof and may exclude the municipality, its governing body, officers, agents, and employees and all persons claiming under them wholly therefrom and shall have, hold, use, operate, manage, and control the same and each and every part thereof and, in the name of the municipality or otherwise as the receiver may deem best, shall exercise all the rights and powers of the municipality with respect to the enterprise as the municipality itself might do.

(2) Such receiver shall:

(a) maintain, restore, insure, and keep insured the enterprise and from time to time make all such necessary or proper repairs as may seem expedient to such receiver;

(b) establish, levy, maintain, and collect such fees, tolls, rentals, and other charges in connection with the enterprise as such receiver may deem necessary or proper and reasonable; and

(c) collect and receive all revenues and deposit the same in a separate account and apply such revenues so collected and received in such manner as the court shall direct.

(3) Such receiver shall, in the performance of the powers conferred upon him, act under the direction and supervision of the court making such appointment and shall at all times be subject to the orders and decrees of such court and may be removed thereby. Nothing herein contained shall limit or restrict the jurisdiction of such court to enter such other and further orders and decrees as such court may deem necessary or appropriate for the exercise by the receiver of any functions specifically set forth herein.

History: En. Sec. 14, Ch. 121, L. 1937; R.C.M. 1947, 79-1914(2), (4).

7-7-4632. Procedure to return enterprise from receiver to municipality. (1) Whenever all that is due upon the refunding bonds and interest thereon and upon any other notes, bonds, or other obligations and interest thereon having a charge, lien, or encumbrance on the revenues of the enterprise and under any of the terms of any covenants or agreements with bondholders shall have been paid or deposited as provided therein and all defaults shall have been cured and made good, the court may in its discretion, after such notice and hearing as it deems reasonable and proper, direct the receiver to surrender possession of the enterprise to the municipality.

(2) The same right of the holders of the refunding bonds to secure the appointment of a receiver exists upon any subsequent default as provided in 7-7-4630 and 7-7-4631.

History: En. Sec. 14, Ch. 121, L. 1937; R.C.M. 1947, 79-1914(3).

7-7-4633. Remedies of holders of refunding revenue bonds. (1) Subject to any contractual limitations binding upon the holders of any issue of refunding bonds or trustee therefor, including but not limited to the restriction of the exercise of any remedy to the specified proportion of percentage of such holders, any holder of refunding bonds or trustee therefor shall have the right and power, for the equal benefit and protection of all holders of refunding bonds similarly situated:

(a) by mandamus or other suit, action, or proceeding at law or in equity, to enforce his rights against the municipality and its governing body and any of its officers, agents, and employees and to require and compel such municipality or such governing body or any such officers, agents, or employees to perform and carry out its and their duties and obligations under this part and its and their covenants and agreements with bondholders;

(b) by action or suit in equity, to require the municipality and the governing body thereof to account as if they were the trustee of an express trust;

(c) by action or suit in equity, to enjoin any acts or things which may be unlawful or in violation of the rights of the bondholders;

(d) to bring suit upon the refunding bonds.

(2) (a) No remedy conferred by this part upon any holder of refunding bonds or any trustee therefor is intended to be exclusive of any other remedy, but each such remedy is cumulative and in addition to every other remedy and

may be exercised without exhausting and without regard to any other remedy conferred by this part or by any other law.

(b) No waiver of any default or breach of duty or contract, whether by any holder of refunding bonds or any trustee therefor, shall extend to or shall affect any subsequent default or breach of duty or contract or shall impair any rights or remedies thereon. No delay or omission of any bondholder or any trustee therefor to exercise any right or power accruing upon any default shall impair any such right or power or shall be construed to be a waiver of any such default or acquiescence therein.

(c) Every substantive right and every remedy conferred upon the holders of refunding bonds may be enforced and exercised from time to time and as often as may be deemed expedient.

(3) In case any suit, action, or proceeding to enforce any right or exercise any remedy shall be brought or taken and then discontinued or abandoned or shall be determined adversely to the holder of the refunding bonds or any trustee therefor, then and in every such case the municipality and such holder or trustee shall be restored to their former positions and rights and remedies as if no such suit, action, or proceeding had been brought or taken.

History: En. Sec. 15, Ch. 121, L. 1937; R.C.M. 1947, 79-1915.

CHAPTER 8

ACQUISITION, TRANSFER, AND MANAGEMENT OF PROPERTY AND BUILDINGS

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Part 1

General Provisions Related to Local Government

7-8-101. Authorization to transfer property between certain governmental entities. (1) A county, upon first passing a resolution of intent to do so and upon giving notice of such intent by publication as provided in 7-1-2121, shall have power to sell or trade to any city, town, or political subdivision, as the interests of its inhabitants require, any property, however held or acquired, which is not necessary for the conduct of the county business, without an ordinance, public notice, public auction, bids, or appraisal. Proceeds, if any, shall be distributed according to law. Such transactions shall be made by resolution of the county commissioners involved and entered in the minutes of the regular or special meetings.

(2) A city or town, upon first passing a resolution of intent to do so and upon giving notice of such intent by publication once a week for 3 weeks in a newspaper published in such city or town or county in which located, shall have power to sell or trade to any county or political subdivision, as the interests of its inhabitants require, any property, however held or acquired, which is not necessary for the conduct of the city or town business, without an ordinance, public notice, public auction, bids, or appraisal. Proceeds, if any, shall be distributed according to law. Such transactions shall be made by resolution of the councils or commissions involved and entered in the minutes of the regular or special meetings.

(3) (a) A county shall have power to trade with or purchase from any city, town, or political subdivision such property without an appraisal of the property traded or purchased.

(b) A city or town shall have power to trade with or purchase from any county or political subdivision such property without an appraisal of the property traded or purchased.

History: **(1)En. Sec. 1, Ch. 302, L. 1969; Sec. 16-1009.1, R.C.M. 1947; (2)En. Sec. 1, Ch. 301, L. 1969; Sec. 11-964.1, R.C.M. 1947; (3)(a)En. Sec. 2, Ch. 302, L. 1969; Sec. 16-1007.1, R.C.M. 1947; (3)(b)En. Sec. 2, Ch. 301, L. 1969; Sec. 11-964.2, R.C.M. 1947; R.C.M. 1947, 11-964.1, 11-964.2, 16-1007.1, 16-1009.1; amd. Sec. 10, Ch. 349, L. 1985.**

7-8-102. Authorization to deed county land to other governmental entities. (1) The county commissioners of any county in Montana are hereby authorized to convey to the state of Montana or to any city or town in Montana or to the United States of America any tract of county-owned land, not exceeding 1,280 acres, to be used for the establishment and maintenance of a park, recreational grounds, or cemetery and to be maintained by the state, city, town, or federal government as a public park, recreational grounds, or cemetery.

(2) Said land shall be deeded to the state, city, town, or federal government without charge but upon the condition that the same shall be devoted and maintained by the state, city, town, or federal government for the purpose specified in subsection (1). In the event that the land shall cease to be used for such purpose for a period of 5 years in succession, the title thereto shall revert to the county making such grant.

History: **En. Sec. 1, Ch. 139, L. 1935; re-en. Sec. 4487.1, R.C.M. 1935; amd. Sec. 1, Ch, 48, L. 1961; amd. Sec. 1, Ch. 7, L. 1977; R.C.M. 1947, 16-1131(part).**

7-8-103. Authorization for governmental and public entities to take property by gift or devise. (1) (a) All counties, all public hospitals and cemeteries, and other public institutions are hereby granted the power and authority to accept, receive, take, hold, and possess any gift, donation, grant, devise, or bequest of real or personal property and the right to own, hold, work, and improve the same.

(b) The provisions of subsection (2) and 7-8-104 are hereby made expressly applicable to gifts, donations, grants, devises, and bequests of real or personal property to officers and boards of the public corporations and institutions mentioned in subsection (1)(a).

(2) (a) Any city or town organized under the laws of Montana is hereby empowered and given the right:

(i) to accept, receive, take, hold, own, and possess any gift, donation, grant, devise, or bequest; any property (real, personal, or mixed); any improved or unimproved park or playground; any water, water right, water reservoir, or watershed; any timberland or reserve; or any fish or game reserve in any part of the state;

(ii) to own, hold, work, and improve the same.

(b) Said gifts, donations, grants, devises, or bequests made to any officer or board of any such city or town shall be considered a gift, donation, grant, devise, or bequest made for the use and benefit of any such city or town and shall be administered and used by and for such city or town for the particular purpose for which the same was given, donated, granted, devised, or bequeathed. In the event no particular purpose is mentioned in such gift, donation, grant, devise, or bequest, then the same shall be used for the general support, maintenance, or improvement of any such city or town.

History: Ap. p. Sec. 1, Ch. 47, L. 1927; re-en. Sec. 5668.17, R.C.M. 1935; Sec. 11-1006, R.C.M. 1947; Ap. p. Sec. 2, Ch. 47, L. 1927; re-en. Sec. 5668.18, R.C.M. 1935; Sec. 11-1007, R.C.M. 1947; Ap. p. Sec. 1, Ch. 10, L. 1917; re-en. Sec. 5043, R.C.M. 1921; re-en. Sec. 5043, R.C.M. 1935; Sec. 11-1004, R.C.M. 1947; Ap. p. Sec. 2, Ch. 10, L. 1917; re-en. Sec. 5044, R.C.M. 1921; re-en. Sec. 5044, R.C.M. 1935; Sec. 11-1005, R.C.M. 1947; R.C.M. 1947, 11-1004, 11-1005(part), 11-1006(part), 11-1007.

7-8-104. Who may make gift or devise to governmental entities. (1) Any company, partnership, corporation, or other nonindividual entity may make to a city or town organized under the laws of Montana a donation, gift, or grant of any property (real, personal, or mixed); any improved or unimproved park or playground; any water, water right, water reservoir, or watershed; any timberland or reserve; or any fish or game reserve in any part of Montana, to be held for the use and benefit of the city or town.

(2) Any person over the age of 18 years and of sound mind and discretion may make to a city or town organized under the laws of Montana a gift, grant, donation, or testamentary disposition of property (real, personal, or mixed); any improved or unimproved park or playground; any water, water right, water reservoir, or watershed; any timberland or reserve; or any fish or game reserve in any part of the state.

History: En. Sec. 2, Ch. 10, L. 1917; re-en. Sec. 5044, R.C.M. 1921; re-en. Sec. 5044, R.C.M. 1935; R.C.M. 1947, 11-1005(part); amd. Sec. 11, Ch. 311, L. 1979.

Part 2

Joint City-County Building

7-8-201. Acquisition or construction and management of city-county building. A city and a county may, by contract, construct, purchase, or lease and manage a city-county building to house the offices of city government and county government.

History: En. Sec. 1, Ch. 45, L. 1967; R.C.M. 1947, 11-4201.

7-8-202. Contents of contract between city and county. The contract shall provide:

(1) for the proposed expenditure for the construction, purchase, or lease of the city-county building and the proposed cost of equipping and operating the building;

(2) for the management of the building by a method which will provide that the city and county shall each be represented and have an active part in the management of the building;

(3) that the management of the joint institution shall have such powers as will be necessary to accomplish the purposes of this part.

History: En. Sec. 2, Ch. 45, L. 1967; R.C.M. 1947, 11-4202(part).

7-8-203. Division of cost. The total cost of the joint institution shall be divided between the city and county in such manner as they shall determine.

History: En. Sec. 2, Ch. 45, L. 1967; R.C.M. 1947, 11-4202(part).

7-8-204. Bonding authority undiminished. This part shall not be interpreted as modifying or diminishing the bonding authority of counties or cities as provided by law.

History: En. Sec. 3, Ch. 45, L. 1967; R.C.M. 1947, 11-4203.

Parts 3 through 20 reserved

Part 21

County Buildings and Equipment

7-8-2101. Provision of rooms for county purposes. The board of county commissioners has jurisdiction and power, under such limitations and restrictions as are prescribed by law, to provide suitable rooms for county purposes when there are no necessary county buildings.

History: En. Subd. 7, Sec. 1, Ch. 100, L. 1931; re-en. Sec. 4465.6, R.C.M. 1935; R.C.M. 1947, 16-1006.

7-8-2102. Erection and maintenance of county buildings. The board of county commissioners has jurisdiction and power, under the limitations and restrictions prescribed by law, to erect, furnish, equip, expand, improve, and maintain a courthouse, jail, health care facility, civic center, youth center, park buildings, museums, recreation centers, and any combination of those buildings and any other public buildings as may be necessary.

History: En. Subd. 9, Sec. 1, Ch. 100, L. 1931; re-en. Sec. 4465.8, R.C.M. 1935; amd. Sec. 1, Ch. 56, L. 1947; amd. Secs. 1, 2, Ch. 238, L. 1947; amd. Secs. 1, 2, Ch. 5, L. 1949; amd. Sec. 1, Ch. 76, L. 1957; amd. Sec. 1, Ch. 150, L. 1959; amd. Sec. 1, Ch. 130, L. 1973; R.C.M. 1947, 16-1008A(part); amd. Sec. 2, Ch. 520, L. 1995.

Compiler's Comments

1995 Amendment: Chapter 520 near middle substituted "health care facility" for "hospital"; and made minor changes in style. Amendment effective April 25, 1995.

7-8-2103. Authorization to create county building commission. The board of county commissioners may create a building commission subject to the provisions of 7-1-201 through 7-1-203.

History: En. Subd. 9, Sec. 1, Ch. 100, L. 1931; re-en. Sec. 4465.8, R.C.M. 1935; amd. Sec. 1, Ch. 56, L. 1947; amd. Secs. 1, 2, Ch. 238, L. 1947; amd. Secs. 1, 2, Ch. 5, L. 1949; amd. Sec. 1, Ch. 76, L. 1957; amd. Sec. 1, Ch. 150, L. 1959; amd. Sec. 1, Ch. 130, L. 1973; R.C.M. 1947, 16-1008A(part); amd. Sec. 3, Ch. 520, L. 1995; amd. Sec. 4, Ch. 543, L. 1995.

Compiler's Comments

1995 Amendments — Composite Section: Chapter 520 in (1), in first sentence, substituted "health care facilities" for "hospitals"; and made minor changes in style. Amendment effective April 25, 1995. The amendment by Ch. 543 rendered the amendment in (1) void.

Chapter 543 near beginning, after "create a", inserted "building" and after "commission" substituted "subject to the provisions of 7-1-201 through 7-1-203" for remainder of section that read: "for the management of such civic center, youth center, park buildings, museums, county parks, recreation centers, hospitals, or any combination of two or more thereof. Such commission shall be composed of the chairman of the board of county commissioners and five lay members to be appointed by the board. In cases where a commission has been appointed, the commission, together with the board, shall have the power to employ a manager.

(2) The terms of office for the first lay members of the commission shall be, respectively, one for 1 year, two for 2 years, and two for 3 years. On the expiration of such terms of figures 1, 2, and 3 years, their successors shall hold for 3 years each.

(3) All of the above persons shall serve without compensation"; and made minor changes in style.

Cross-References

Joint Fair and Civic Center Commission, 7-21-3451 through 7-21-3458.

7-8-2104. Insurance of county buildings. The board of county commissioners has jurisdiction and power, under such limitations and restrictions as are prescribed by law, to insure the county buildings in the name of and for the benefit of the county and shall have the power to use the proceeds of any insurance policy which may be paid by reason of a loss covered thereby for the purpose of rebuilding the structure lost or damaged or, if the fire insurance proceeds are less than $25,000, for building new structures or buildings.

History: En. Subd. 16, Sec. 1, Ch. 100, L. 1931; re-en. Sec. 4465.15, R.C.M. 1935; amd. Sec. 1, Ch. 116, L. 1953; R.C.M. 1947, 16-1018.

7-8-2105 through 7-8-2110 reserved.

7-8-2111. Inventory of county tools and equipment. It shall be the duty of the board of county commissioners to prepare and file with the county clerk and recorder an annual inventory covering all county tools, machinery, and equipment.

History: En. Subd. 22, Sec. 1, Ch. 100, L. 1931; re-en. Sec. 4465.21, R.C.M. 1935; amd. Sec. 1, Ch. 144, L. 1949; R.C.M. 1947, 16-1024(part).

7-8-2112. Written agreements for loan or lease of county tools and equipment. Whenever county tools, machinery, or equipment are loaned or leased to private individuals, firms, associations, organizations, or corporations, they shall execute a written agreement stating the purpose of such loan or lease, the compensation to be paid the county, and that such tools, machinery, and equipment will be returned in good condition.

History: En. Subd. 22, Sec. 1, Ch. 100, L. 1931; re-en. Sec. 4465.21, R.C.M. 1935; amd. Sec. 1, Ch. 144, L. 1949; R.C.M. 1947, 16-1024(part).

Part 22

Acquisition, Transfer, and Management of County Property

7-8-2201. Authorization for county to obtain property. The board of county commissioners has jurisdiction and power, under such limitations and restrictions as are prescribed by law, to purchase, receive by donation, or lease any real or personal property necessary for the use of the county and to preserve, take care of, manage, and control the same.

History: En. Subd. 8, Sec. 1, Ch. 100, L. 1931; amd. Sec. 1, Ch. 74, L. 1933; re-en. Sec. 4465.7, R.C.M. 1935; R.C.M. 1947, 16-1007(part).

7-8-2202. Appraisal required for certain purchases of real property. Unless otherwise provided, no purchase of real property exceeding the value of $2,500 may be made unless the value of the same has been previously estimated by three disinterested citizens of the county appointed by the district judge for that purpose, and no more than the appraised value must be paid therefor.

History: En. Subd. 8, Sec. 1, Ch. 100, L. 1931; amd. Sec. 1, Ch. 74, L. 1933; re-en. Sec. 4465.7, R.C.M. 1935; R.C.M. 1947, 16-1007(part); amd. Sec. 1, Ch. 346, L. 1983.

7-8-2203 through 7-8-2210 reserved.

7-8-2211. Authorization to sell and exchange county property. (1) Boards of county commissioners of this state have the power to sell, trade, or exchange any real or personal property, however acquired, belonging to the county that is not necessary to the conduct of county business or the preservation of its property.

(2) Whenever a county purchases equipment as provided in 7-5-2301 through 7-5-2308, county equipment which is not necessary to the conduct of the county business may be traded in as part of the purchase price after

appraisal as provided in 7-8-2214 or may be sold at public auction as provided in 7-8-2212, in the discretion of the board.

(3) Any sale, trade, or exchange of real or personal property shall be accomplished under the provisions of Title 7, and in an exchange of real property the properties shall be appraised and no exchange of county property may be made unless property received in exchange therefor shall be of an equivalent value. In the event the properties are not of equivalent values, the exchange may be completed if a cash payment is made in addition to the delivery of title for property having the lesser value.

History: En. Subd. 10, Sec. 1, Ch. 100, L. 1931; re-en. Sec. 4465.9, R.C.M. 1935; amd. Sec. 1, Ch. 30, L. 1953; amd. Sec. 1, Ch. 110, L. 1957; amd. Sec. 1, Ch. 120, L. 1967; amd. Sec. 1, Ch. 284, L. 1975; R.C.M. 1947, 16-1009(part); amd. Sec. 1, Ch. 547, L. 1983.

7-8-2212. Notice of sale and public auction required for certain sales. Unless otherwise provided, if real or personal property to be sold is reasonably of a value in excess of $2,500, the sale must be at public auction at a site determined by the board of county commissioners after notice by publication as provided in 7-1-2121.

History: En. Subd. 10, Sec. 1, Ch. 100, L. 1931; re-en. Sec. 4465.9, R.C.M. 1935; amd. Sec. 1, Ch. 30, L. 1953; amd. Sec. 1, Ch. 110, L. 1957; amd. Sec. 1, Ch. 120, L. 1967; amd. Sec. 1, Ch. 284, L. 1975; R.C.M. 1947, 16-1009(part); amd. Sec. 2, Ch. 346, L. 1983; amd. Sec. 11, Ch. 349, L. 1985; amd. Sec. 1, Ch. 74, L. 1995.

Compiler's Comments

1995 Amendment: Chapter 74 after "public auction at" substituted "a site determined by the board of county commissioners" for "the courthouse door"; and made minor changes in style.

7-8-2213. Terms of sale. (1) The sale shall be for cash or on such terms as the board of county commissioners may approve provided at least 20% of the purchase price shall be paid in cash. All deferred payments on the purchase price of any property sold shall bear interest at the rate of 6% per annum, payable annually, and may be extended over a period of not more than 5 years.

(2) No sale shall be made at public auction or to any school district without public auction for less than 90% of the appraised value.

(3) No title to any property sold under the provisions of 7-8-2211 through 7-8-2220 shall pass from the county until the purchaser or his assigns shall have paid the full amount of the purchase price therefor into the county treasury for the use and benefit of the county.

History: En. Subd. 10, Sec. 1, Ch. 100, L. 1931; re-en. Sec. 4465.9, R.C.M. 1935; amd. Sec. 1, Ch. 30, L. 1953; amd. Sec. 1, Ch. 110, L. 1957; amd. Sec. 1, Ch. 120, L. 1967; amd. Sec. 1, Ch. 284, L. 1975; R.C.M. 1947, 16-1009(part).

7-8-2214. Appraisal required for certain sales. Unless otherwise provided:

(1) in all sales of property of a value in excess of $2,500, there must, before any sale, be an appraisal thereof by the board and at a price representing a fair market value of such property. Such appraised value shall be stated in the notice of sale.

(2) no sale shall be made at public auction or to any school district without public auction of any property unless it has been appraised within 3 months prior to the date of the sale.

History: **En. Subd. 10, Sec. 1, Ch. 100, L. 1931; re-en. Sec. 4465.9, R.C.M. 1935; amd. Sec. 1, Ch. 30, L. 1953; amd. Sec. 1, Ch. 110, L. 1957; amd. Sec. 1, Ch. 120, L. 1967; amd. Sec. 1, Ch. 284, L. 1975; R.C.M. 1947, 16-1009(part); amd. Sec. 3, Ch. 346, L. 1983.**

7-8-2215. Procedure to challenge appraised value. (1) Any taxpayer who may believe that such appraised value is less than the actual value of the property may, at any time before the day fixed for the sale of such property, file with the board of county commissioners written objections to such appraised value.

(2) When any such objection is filed, it vacates the sale and the board must at once apply to the judge of the district court to have such property reappraised.

(3) (a) Upon such application, the district judge shall appoint for purpose of reappraisal three disinterested persons. Such appraisers, when appointed by the district judge and after filing their appraisal report with the county clerk and recorder, shall be allowed $5 per day for each day necessarily employed in making such appraisal and their necessary and actual expenses.

(b) The appraisal of the persons appointed under subsection (3)(a) must be made and filed with the county clerk and recorder. The new appraisal or reappraisal shall be used in the next sale of such property.

History: **En. Subd. 10, Sec. 1, Ch. 100, L. 1931; re-en. Sec. 4465.9, R.C.M. 1935; amd. Sec. 1, Ch. 30, L. 1953; amd. Sec. 1, Ch. 110, L. 1957; amd. Sec. 1, Ch. 120, L. 1967; amd. Sec. 1, Ch. 284, L. 1975; R.C.M. 1947, 16-1009(part).**

7-8-2216. Sale of county property to school district. (1) The board of county commissioners shall have the power to sell directly to the school district, without the necessity of a public auction, any real or personal property, however acquired, belonging to the county and which is not necessary to the conduct of the county's business or the preservation of its property, for its appraised value, which shall represent a fair market value of such property.

(2) If the property to be sold to the school district is reasonably of a value in excess of $2,500, notice of the sale shall be given by publication as provided in 7-1-2121.

History: **En. Subd. 10, Sec. 1, Ch. 100, L. 1931; re-en. Sec. 4465.9, R.C.M. 1935; amd. Sec. 1, Ch. 30, L. 1953; amd. Sec. 1, Ch. 110, L. 1957; amd. Sec. 1, Ch. 120, L. 1967; amd. Sec. 1, Ch. 284, L. 1975; R.C.M. 1947, 16-1009(2); amd. Sec. 4, Ch. 346, L. 1983; amd. Sec. 12, Ch. 349, L. 1985.**

Cross-References

Trustees' authority to acquire property by lease-purchase agreement, 20-6-609.

7-8-2217. Procedure for sale of property of lesser value. (1) If the property to be sold is reasonably of a value of less than $2,500, sale thereof may be had at either public or private sale, as in the discretion of the board of county commissioners may appear to be to the best interests of the county.

(2) If it be at public sale, notice shall be given by posting in five public places in the county at least 5 days before the date of sale.

History: **En. Subd. 10, Sec. 1, Ch. 100, L. 1931; re-en. Sec. 4465.9, R.C.M. 1935; amd. Sec. 1, Ch. 30, L. 1953; amd. Sec. 1, Ch. 110, L. 1957; amd. Sec. 1, Ch. 120, L. 1967; amd. Sec. 1, Ch. 284, L. 1975; R.C.M. 1947, 16-1009(part); amd. Sec. 5, Ch. 346, L. 1983.**

7-8-2218. Procedure if property not sold at public auction. After notice and appraisal are given as provided in 7-8-2212 and 7-8-2214, if no bid or offer is made for any property offered for sale at public auction, the board of county commissioners may, at any time after the auction, sell the property at private sale and may at the private sale accept as the purchase price an amount not less than 70% of the appraised value of the property.

History: **En. Subd. 10, Sec. 1, Ch. 100, L. 1931; re-en. Sec. 4465.9, R.C.M. 1935; amd. Sec. 1, Ch. 30, L. 1953; amd. Sec. 1, Ch. 110, L. 1957; amd. Sec. 1, Ch. 120, L. 1967; amd. Sec. 1, Ch. 284, L. 1975; R.C.M. 1947, 16-1009(part); amd. Sec. 3, Ch. 547, L. 1983; amd. Sec. 6, Ch. 18, L. 1995.**

Compiler's Comments

1995 Amendment: Chapter 18 at beginning inserted "After notice and appraisal are given as provided in 7-8-2212 and 7-8-2214" and near middle, after "public auction", deleted "after notice and appraisal given as provided in 7-8-2212 and 7-8-2214"; and made minor changes in style.

7-8-2219. Exchange of county land in case of failure to make sale. If within 1 year no immediate sale be had of real estate attempted to be sold under the provisions of 7-8-2211 through 7-8-2220, the board of county commissioners may make trades or exchanges of such real estate owned by the county for any other lands or real estate of equal value located within the same county.

History: **En. Subd. 10, Sec. 1, Ch. 100, L. 1931; re-en. Sec. 4465.9, R.C.M. 1935; amd. Sec. 1, Ch. 30, L. 1953; amd. Sec. 1, Ch. 110, L. 1957; amd. Sec. 1, Ch. 120, L. 1967; amd. Sec. 1, Ch. 284, L. 1975; R.C.M. 1947, 16-1009(5).**

7-8-2220. Use of proceeds of property disposition. The funds derived from property disposed of in accordance with 7-8-2211, in the discretion of the board of county commissioners, may be credited to any account that is in the best interest of the county.

History: **En. Subd. 10, Sec. 1, Ch. 100, L. 1931; re-en. Sec. 4465.9, R.C.M. 1935; amd. Sec. 1, Ch. 30, L. 1953; amd. Sec. 1, Ch. 110, L. 1957; amd. Sec. 1, Ch. 120, L. 1967; amd. Sec. 1, Ch. 284, L. 1975; R.C.M. 1947, 16-1009(6); amd. Sec. 2, Ch. 547, L. 1983.**

7-8-2221 through 7-8-2230 reserved.

7-8-2231. Authorization to lease county property. (1) The board of county commissioners has jurisdiction and power, under such limitations and restrictions as are prescribed by law, to lease and demise county property, however acquired, which is not necessary to the conduct of the county's business or the preservation of county property and for which immediate sale cannot be had. Such leases shall be in such manner and for such purposes as, in the judgment of the board, shall seem best suited to advance the public benefit and welfare.

(2) Except as provided in 7-8-2233:

(a) all such property must be leased subject to sale by the board; and

(b) no lease shall be for a period to exceed 10 years.

History: **En. Subd. 28, Sec. 1, Ch. 100, L. 1931; re-en. Sec. 4465.27, R.C.M. 1935; amd. Sec. 1, Ch. 152, L. 1937; amd. Sec. 1, Ch. 11, L. 1959; R.C.M. 1947, 16-1030(part).**

7-8-2232. Distribution of lease revenue. All revenue derived from leases authorized by 7-8-2231, except as otherwise provided, must be paid into the county treasury. Upon receipt of funds, the county treasurers shall distribute the revenue as collected to the several county and trust and agency funds on the basis of the tax levy for the current year.

History: **En. Subd. 28, Sec. 1, Ch. 100, L. 1931; re-en. Sec. 4465.27, R.C.M. 1935; amd. Sec. 1, Ch. 152, L. 1937; amd. Sec. 1, Ch. 11, L. 1959; R.C.M. 1947, 16-1030(part); amd. Sec. 1, Ch. 15, L. 1993.**

7-8-2233. Special provisions relating to coal leases. (1) Leases for deposits of coal only or for coal and the surface above the same owned by any county or to which any county acquires title by tax title, tax deed, or otherwise may be for a period of 10 years and as long thereafter as coal is being mined and extracted from the leased property in commercial quantities.

(2) As to all such deposits of coal only or coal and surface, the provisions of the laws of Montana relating to the sale by the county commissioners of a county of property owned by the county or acquired by tax title or otherwise shall be suspended during the time any such lease or leases of coal only or coal and surface made under 7-8-2231 shall be in force and effect.

History: En. Subd. 28, Sec. 1, Ch. 100, L. 1931; re-en. Sec. 4465.27, R.C.M. 1935; amd. Sec. 1, Ch. 152, L. 1937; amd. Sec. 1, Ch. 11, L. 1959; R.C.M. 1947, 16-1030(part).

Part 23
Sale of Tax-Deed Land

Part Cross-References

Tax sales, Title 15, ch. 17.

7-8-2301. Disposal of county tax-deed land. (1) Whenever the county acquires land by tax deed, it is the duty of the board of county commissioners, within 6 months after acquiring title, to enter an order to:

(a) sell the land at public auction;

(b) donate the land to a municipality, as provided in subsection (3), if the land is within the incorporated boundaries of the municipality;

(c) donate the land to a nonprofit corporation as provided in subsection (3); or

(d) retain the land for the county as provided in subsection (3).

(2) When tax-deed land is to be sold, the sale may not be made for a price less than the sales price determined and fixed by the board prior to making the order of sale. The sales price may be set in an amount sufficient to recover the full amount of taxes, assessments, penalties, and interest due at the time the tax deed was issued to the county plus the county's costs in taking the tax deed and in conducting the sale and additional taxes due, if any, at the time of the sale.

(3) A board of county commissioners may, upon expiration of the repurchase period provided for in 7-8-2303:

(a) sell the land as provided in subsections (2) and (4);

(b) donate the land to a municipality with the consent of the municipality;

(c) donate the land to a nonprofit corporation for the purpose of constructing:

(i) a multifamily housing development operated by the corporation; or

(ii) single-family houses. Upon completion of a house, the nonprofit corporation shall sell the property to a low-income person who meets the eligibility requirements of the corporation. Once the sale is completed, the property becomes subject to taxation.

(d) retain the land for the county pursuant to 7-8-2501.

(4) If bids are not received at a sale of tax-deed land, the board shall order another auction sale of the land under this part within 6 months and may, if required by the circumstances, redetermine the sales price of the land deter-

mined under subsection (2). In the period of time between the auction conducted under subsection (1), in which there were not any qualifying bids for the land, and an auction held pursuant to this subsection, the board may sell the land by negotiated sale at a price that is not less than the sales price that was fixed for the original auction under subsection (1)(a).

(5) If a bid is not received at the sale conducted under subsection (4), the board may dispose of the land as provided in 7-8-2218.

(6) Notwithstanding the amount of the sales price fixed by the board prior to the auction conducted under subsection (1)(a), if the successful sale bidder is the delinquent taxpayer or the taxpayer's successor in interest, the taxpayer's agent, or a member of the taxpayer's immediate family, the purchase price may not be less than the amount necessary to pay, in full, the taxes, assessments, penalties, and interest due on the land at the time of taking the tax deed plus interest on the full amount at the rate provided for in 15-16-102 from the date of the tax deed to the date of the repurchase as well as the costs of the county in taking the tax deed and additional taxes or assessments due, if any, at the time of repurchase.

History: En. Sec. 1, Ch. 171, L. 1941; amd. Sec. 1, Ch. 144, L. 1945; R.C.M. 1947, 84-4190(part); amd. Sec. 1, Ch. 617, L. 1987; amd. Sec. 6, Ch. 704, L. 1989; amd. Sec. 1, Ch. 185, L. 1991; amd. Sec. 1, Ch. 496, L. 1991; amd. Sec. 1, Ch. 316, L. 1993; amd. Sec. 1, Ch. 369, L. 1993; amd. Sec. 1, Ch. 280, L. 1995.

Compiler's Comments

1995 Amendment: Chapter 280 in (1)(a), at end, deleted "at the front door of the courthouse"; inserted (1)(d) regarding retention of the land for the county; in (2), at beginning of first sentence, inserted "When tax-deed land is to be sold" and near middle substituted "sales price" for "fair market value of the land" and substituted second sentence regarding establishment of sales price for former language that read: "In determining fair market value, the board shall subtract the amount of outstanding assessments that are a lien on the land from the unencumbered value of the land, but the minimum sale price for a parcel of land may not be less than $10"; inserted (3) setting out Board options upon expiration of a repurchase period; in (4), in two places, substituted "sales price" for "fair market value"; in (6), near beginning, substituted "sales price" for "fair market value" and at end substituted "the taxes, assessments, penalties, and interest due on the land at the time of taking the tax deed plus interest on the full amount at the rate provided for in 15-16-102 from the date of the tax deed to the date of the repurchase as well as the costs of the county in taking the tax deed and additional taxes or assessments due, if any, at the time of repurchase" for "all county costs of conducting the sale, delinquent taxes, assessments, and all interest and penalties"; deleted (6) that read: "(6) A board of county commissioners may, upon expiration of the redemption period provided for in 15-18-111, donate the land to a municipality with the consent of the municipality"; deleted (7) that read: "(7) A board of county commissioners may, upon expiration of the redemption period provided for in 15-18-111, donate the land to a nonprofit corporation for the purpose of constructing:

(a) a multifamily housing development operated by the corporation; or

(b) single-family houses. Upon completion of a house, the nonprofit corporation shall sell the property to a low-income person who meets the eligibility requirements of the corporation. Once the sale is completed, the property becomes subject to taxation"; adjusted subsection references; and made minor changes in style.

7-8-2302. Notice of disposal of tax-deed lands. (1) Notice of the sale, donation, or retention of tax-deed lands provided for in 7-8-2301 must be given by publication as provided in 7-1-2121 and must also be posted in at least three public places in the county.

(2) The posted and published notice must be signed by the county clerk, and the published notice must include a list of all lands to be sold, donated, or retained, the fair market value of the lands as determined and fixed by the

department of revenue, and the time and place of sale, donation, or retention. If the land is to be sold, the sales price as determined under 7-8-2301 must be stated in the published notice of sale.

History: En. Sec. 1, Ch. 171, L. 1941; amd. Sec. 1, Ch. 144, L. 1945; R.C.M. 1947, 84-4190(part); amd. Sec. 13, Ch. 349, L. 1985; amd. Sec. 2, Ch. 280, L. 1995.

Compiler's Comments

1995 Amendment: Chapter 280 in (1), near beginning after "sale", inserted "donation, or retention of tax-deed lands"; in (2), near beginning of first sentence, substituted "the published notice must" for "one notice may", after "sold" substituted "donated, or retained, the fair market value of the lands as determined and fixed by the department of revenue" for "the appraised value of the same", and at end, after "sale", inserted "donation, or retention" and in second sentence, at beginning, substituted "If the land is to be sold, the sales price" for "The fair market value" and near end, before "notice", inserted "published"; and made minor changes in style.

7-8-2303. Repurchase rights of taxpayer or successors. At any time up to 24 hours before the time fixed for the first offering of property for sale or the time fixed for the donation or retention of the property pursuant to 7-8-2301, the taxpayer or the taxpayer's successor in interest or legal representative may repurchase the property from the county. The property may be repurchased, subject to the reservations provided for in 7-8-2305, by payment to the county of the full amount of the taxes, assessments, penalties, and interest due on the land at the time of taking the tax deed plus interest on the full amount at the rate provided for in 15-16-102 from the date of the tax deed to the date of repurchase as well as the costs of the county in taking the tax deed and additional taxes or assessments due, if any, at the time of repurchase. The purchase and payment may be effected by an installment contract with annual payments as provided for in 7-8-2304.

History: En. Sec. 1, Ch. 171, L. 1941; amd. Sec. 1, Ch. 144, L. 1945; R.C.M. 1947, 84-4190(part); amd. Sec. 1, Ch. 97, L. 1993; amd. Sec. 3, Ch. 280, L. 1995.

Compiler's Comments

1995 Amendment: Chapter 280 near beginning of first sentence, after "time", inserted "up to 24 hours" and after "sale" inserted "or the time fixed for the donation or retention of the property" and in second sentence, near middle after "taxes", inserted "assessments" and at end inserted "as well as the costs of the county in taking the tax deed and additional taxes or assessments due, if any, at the time of repurchase".

7-8-2304. Terms for sale of tax-deed land. (1) A sale must be made for cash or, in the case of real property, on terms that the board of county commissioners approves.

(2) (a) If the sale is made on terms, at least 20% of the purchase price must be paid in cash at the date of sale and the remainder may be paid in installments extending over a period not to exceed 5 years. All deferred payments bear interest at a rate established by the board of county commissioners. The rate may not exceed more than 4 percentage points a year above the prime rate of major New York banks, as published in the Wall Street Journal within 7 days prior to the date of sale.

(b) If a sale is made on terms, the chairman of the board shall execute a contract containing the terms that are provided by a contract approved by the department of revenue.

History: En. Sec. 2, Ch. 171, L. 1941; amd. Sec. 1, Ch. 187, L. 1949; amd. Sec. 1, Ch. 163, L. 1969; R.C.M. 1947, 84-4191(part); amd. Sec. 7, Ch. 704, L. 1989; amd. Sec. 1, Ch. 674, L. 1991.

7-8-2305. Deed of conveyance — reservation of mineral royalty. (1) Subject to the provisions of subsection (2), upon payment of the purchase price in full, together with all interest which may become due on any installment or deferred payments, the chairman of the board of county commissioners shall execute a deed attested to by the county clerk to the purchaser or his assigns or such other instruments as shall be sufficient to convey all of the title of the county in and to the property so sold.

(2) The county may in the discretion of the board reserve not to exceed 6 1/4% royalty interest in the oil, gas, other hydrocarbons, and minerals produced and saved from said land.

History: En. Sec. 2, Ch. 171, L. 1941; amd. Sec. 1, Ch. 187, L. 1949; amd. Sec. 1, Ch. 163, L. 1969; R.C.M. 1947, 84-4191(part).

Cross-References

Actions arising from the seizure or sale of property for taxes, 27-2-210.

7-8-2306. Distribution of sale and lease proceeds. The proceeds of each sale or lease under this part or part 25 must be paid over to the county treasurer, who shall apportion and distribute the proceeds in the following manner:

(1) (a) Upon a sale of the property, the proceeds of each sale must be credited to the county general fund for reimbursement of expenditures made from it in connection with the procurement of the tax deed and holding of the sale.

(b) Upon a sale of the property, if there is any money remaining after the payment of the amount specified in subsection (1)(a) and the remainder is:

(i) in excess of the aggregate amount of all taxes and assessments accrued against the property for all funds and purposes, without penalty and interest, then as much of the remaining proceeds must be credited to each fund or purpose as each fund or purpose would have received had the taxes been paid before becoming delinquent, and all excess must be credited to the general fund of the county; or

(ii) less in amount than the aggregate amount of all taxes and assessments accrued against the property for all funds and purposes, without penalty or interest, the proceeds must be prorated between the funds and purposes in the proportion that the amount of taxes and assessments accrued against the property for each fund or purpose bears to the aggregate amount of taxes and assessments accrued against the property for all funds and purposes.

(2) If tax-deed lands have been sold and the county has reserved a royalty interest, any sums of money received from the royalty interest must be credited to the general fund of the county, except that the board of county commissioners may allocate to the county road fund not more than 50% of the money received from reserved royalty interests.

(3) Upon a lease of the property, except as otherwise provided, the amount received as rent, royalty, or otherwise, including interest received on the payments under either a sale or lease, must be apportioned on the current year's levy and must be credited as earnings of tax-deed property and not considered as a credit to tax-deed accrued accounts as in the case of the principal received from sales of tax-deed lands.

History: En. Sec. 6, Ch. 171, L. 1941; amd. Sec. 1, Ch. 81, L. 1943; amd. Sec. 1, Ch. 144, L. 1955; R.C.M. 1947, 84-4195; amd. Sec. 2, Ch. 105, L. 1979; amd. Sec. 1, Ch. 675, L. 1991.

Cross-References

Actions arising from the seizure or sale of property for taxes, 27-2-210.

7-8-2307. Tax liability of purchased tax-deed lands. (1) On January 1 following the execution of such contract or deed, the land shall be subject to taxation in the name of the purchaser or his assignee.

(2) In the event the taxes are not paid and the same become delinquent, said contract shall be subject to cancellation and all payments theretofore made shall be taken, treated, and regarded as rent for said property.

History: En. Sec. 3, Ch. 171, L. 1941; amd. Sec. 14, Ch. 388, L. 1975; R.C.M. 1947, 84-4192.

7-8-2308. Sale of lands of less than fifty dollar valuation and other than tax-deed lands. Property belonging to the county of the value of less than $50 and property of the county acquired by means other than by tax deed may be sold as provided by 7-8-2211 through 7-8-2220 and, except so far as they may conflict with the provisions of this part, 7-8-2211 through 7-8-2220 shall remain in force and effect. Nothing herein contained shall be construed as repealing 7-8-2401 through 7-8-2403.

History: En. Sec. 8, Ch. 171, L. 1941; R.C.M. 1947, 84-4197.

Part 24

Exchange of Tax-Deed Land With United States

7-8-2401. Authorization to exchange tax-deed land with United States for certain purposes. (1) All real property acquired by any county under tax title which in the judgment of the board of county commissioners is suitable for the production of trees or as a watershed or for other national forest purposes may be conveyed by deed to the United States by the board in exchange for government land or timber, if in the discretion of the board it is to the advantage and best interests of the county to make such exchange.

(2) The board is hereby authorized to accept from the United States for and on behalf of the county, as full compensation for such county land so exchanged, title to land or timber of the United States equal in value to the appraised value of the county land so exchanged for the same.

(3) No public notice of the intention to convey title to the United States to any of the property subject to this part shall be necessary. The board shall have authority to defray all expenses necessarily incident to such exchange.

History: (1), (2)En. Sec. 1, Ch. 150, L. 1935; re-en. Sec. 4487.2, R.C.M. 1935; Sec. 16-1132, R.C.M. 1947; (3)En. Sec. 4, Ch. 150, L. 1935; re-en. Sec. 4487.5, R.C.M. 1935; Sec. 16-1135, R.C.M. 1947; R.C.M. 1947, 16-1132, 16-1135(part).

7-8-2402. Disposal of land and timber acquired by county pursuant to exchange agreement with United States. (1) Any timber acquired from the United States in any exchange may be disposed of by the county commissioners by agreement with the United States department of agriculture that such timber shall be cut and removed by any agency selected by the United

States department of agriculture, with the understanding that the stumpage payments for timber so cut will be paid over to the county in cash as full compensation for the county land exchanged to the United States. The amount of such stumpage payments, so paid over, shall equal the appraised value of the county land exchanged for same, and such cash payments shall be deposited in the county treasury for the use of the county.

(2) All land and all timber not subject to the arrangement authorized in subsection (1) and acquired by the county under the provisions of this part may be sold by the board of county commissioners in the manner provided by law for the sale of county property, and the proceeds of such sale shall be deposited in the county treasury for the use of the county.

History: (1)En. Sec. 2, Ch. 150, L. 1935; re-en. Sec. 4487.3, R.C.M. 1935; Sec. 16-1133, R.C.M. 1947; (2)En. Sec. 3, Ch. 150, L. 1935; re-en. Sec. 4487.4, R.C.M. 1935; Sec. 16-1134, R.C.M. 1947; R.C.M. 1947, 16-1133, 16-1134.

7-8-2403. Effect of conveyance of land to United States. The execution by the board of county commissioners of a deed of conveyance to the United States of any county land conveyed under this part shall operate to discharge and cancel all tax levies, tax liens, and special assessments of every sort and kind against such land and to convey all of the county's title to such lands at the time of the execution of said deed.

History: En. Sec. 4, Ch. 150, L. 1935; re-en. Sec. 4487.5, R.C.M. 1935; R.C.M. 1947, 16-1135(part).

Part 25

Classification and Alternative Management of County Lands

Part Cross-References

Actions arising from the seizure or sale of property for taxes, 27-2-210.

7-8-2501. Purposes of part. The purposes of this part are:

(1) to authorize a board of county commissioners to establish criteria for the classification of unsold tax-deed lands and other county-owned lands, however acquired, and to classify such lands for retention or disposal in accordance with such criteria so that county-owned lands shall be used in the best interests of the county and for the public benefit and welfare;

(2) to encourage the application of a multiple use principle in the utilization and administration of such lands so that the administration of lands classified for retention can be coordinated with land use planning, zoning, grazing and agricultural land improvement, fish and wildlife habitat improvement and enhancement, recreation, access to other intermingled or adjacent multiple use areas, and for any other appropriate uses which are in the best interests of the county or which will advance the public benefit and welfare; and

(3) to grant sufficient powers to the board to enable the board to achieve the foregoing purposes.

History: En. 84-4190.1 by Sec. 1, Ch. 540, L. 1975; R.C.M. 1947, 84-4190.1.

7-8-2502. Application of part. (1) Any lands offered for sale by the county commissioners of any county pursuant to 7-8-2301 and not sold at the sale, any lands classified for retention by the county, any lands concerning which the preferential right to purchase has been terminated and barred pursuant to the provisions of 7-8-2303, and any other lands owned by the county, however acquired, may, in the discretion and at the election of the board, be administered by the board under this part.

(2) The board may in its discretion elect to exercise any of the powers and authority granted to it by this part, and to the extent that the board elects, the provisions of this part are controlling and supersede all conflicting provisions of other laws.

(3) The sale, exchange, lease, or issuance of licenses and permits of county lands as provided in this part extends only to those lands not necessary to the conduct of the county's business.

History: (1), (2)En. 84-4192.1 by Sec. 3, Ch. 540, L. 1975; Sec. 84-4192.1, R.C.M. 1947; (3)En. 84-4192.2 by Sec. 4, Ch. 540, L. 1975; Sec. 84-4192.2, R.C.M. 1947; R.C.M. 1947, 84-4192.1(part), 84-4192.2(part); amd. Sec. 4, Ch. 280, L. 1995.

Compiler's Comments

1995 Amendment: Chapter 280 in (1), near beginning after "sale", inserted "any lands classified for retention by the county"; and made minor changes in style.

7-8-2503. Definitions. As used in this part, the following definitions apply:

(1) "Board" means the board of county commissioners.

(2) "Multiple use" means:

(a) the management of the various surface and subsurface resources so that they are utilized in the combination that will best meet the present and future needs of the county;

(b) the most judicious use of the land for some or all of these resources or related services over areas large enough to provide sufficient latitude for periodic adjustments in use to conform to changing needs and conditions;

(c) the use of some land for less than all of the resources;

(d) the harmonious and coordinated management of the various resources, each with the other, without impairment of the productivity of the land and with consideration being given to the relative values of the various resources and not necessarily the combination of uses that will give the greatest dollar return or the greatest unit output; and

(e) the use of said lands, where possible, to afford access in multiple use areas to federal and state lands.

History: En. 84-4190.2 by Sec. 2, Ch. 540, L. 1975; R.C.M. 1947, 84-4190.2.

7-8-2504. Classification of county lands. The board may:

(1) establish criteria for the classification of the lands referred to in 7-8-2502(1);

(2) classify such lands, surface and subsurface, for retention or disposal and for such purposes and uses as the board may determine are in the best interests of the county and for the public benefit and welfare, and in so doing, the board shall consider the multiple use potential of said lands and the potential of said lands as access to other intermingled or adjacent multiple use lands or areas.

History: En. 84-4192.1 by Sec. 3, Ch. 540, L. 1975; R.C.M. 1947, 84-4192.1(1)(a), (b).

7-8-2505. Rules for administration of county lands. The board may promulgate rules for the administration of such lands.

History: **En. 84-4192.1 by Sec. 3, Ch. 540, L. 1975; R.C.M. 1947, 84-4192.1(1)(i).**

7-8-2506. Advisory committee. The board may appoint not less than three or more than five residents of the county to act as an advisory committee to the board in implementing the provisions of this part. The duties of the advisory committee are to be established by the board. The board may provide for the payment of expenses incurred by the advisory committee in the carrying out of their duties.

History: **En. 84-4192.1 by Sec. 3, Ch. 540, L. 1975; R.C.M. 1947, 84-4192.1(7).**

7-8-2507. Land management alternatives. The board may:

(1) (a) grant permits or licenses to use the lands in the manner that the board determines and in the best interests of the county and for the public benefit and welfare; and

(b) fix the terms, conditions, and price of the permits or licenses;

(2) enter into cooperative use agreements with individuals, groups of individuals, corporations, associations, cooperative state grazing districts, the state of Montana, the United States of America, and any state or federal subdivision, department, bureau, commission, or agency, including but not limited to the Montana department of fish, wildlife, and parks, the bureau of land management, conservation districts, and the Montana department of natural resources and conservation;

(3) trade or exchange the lands with individuals or other state or federal governmental agencies, pursuant to terms, conditions, and procedures adopted by the board;

(4) (a) grant leases of the lands for the purposes and uses that the board determines are in the best interests of the county, including the exploration and development of oil, gas, and other minerals; and

(b) fix the terms and conditions of the leases and the consideration to be paid by any lessee; and

(5) sell the lands or any part of the lands pursuant to the procedures provided in this part.

History: **En. 84-4192.1 by Sec. 3, Ch. 540, L. 1975; R.C.M. 1947, 84-4192.1(part); amd. Sec. 2, Ch. 218, L. 1979; amd. Sec. 24, Ch. 418, L. 1995.**

Compiler's Comments

1995 Amendment: Chapter 418 at end of (2) substituted "department of natural resources and conservation" for "department of state lands"; and made minor changes in style. Amendment effective July 1, 1995.

7-8-2508. Details relating to leases, permits, and licenses. (1) A lease of lands under this part shall not be made for a consideration less than an amount equal to the taxes these lands would have levied upon them if they were private lands.

(2) Leases, permits, and licenses shall not extend for a period longer than 10 years, except that oil, gas, and other mineral leases may be for a term of 10 years and as long thereafter as oil, gas, or other minerals are produced in commercial quantities. However, the board may provide for the renewal of such leases, permits, and licenses.

History: **En. 84-4192.1 by Sec. 3, Ch. 540, L. 1975; R.C.M. 1947, 84-4192.1(part).**

7-8-2509. Improvements on leaseholds. (1) The board may authorize a lessee to place upon the lands improvements directly related to conservation of the land or necessary for proper utilization of the land for the purposes for which it is leased.

(2) (a) Whenever another person becomes the lessee of such land, such other persons shall pay to the former lessee the reasonable value of such improvements at the time the new lessee takes possession of such lands. The former lessee may, at the former lessee's option, remove or dispose of the movable improvements, but the same must be removed within 60 days from the date of the expiration of the lease. If not so removed, then all such improvements shall become the property of the county unless the board for good cause grants additional time for the removal thereof. Before a lease is issued to the new lessee, the new lessee shall show that the former lessee has been paid the value of the improvements as agreed upon by them or as fixed and determined as herein provided or that the former lessee has elected to remove the improvements.

(b) In case the former lessee and the new lessee are unable to agree on the reasonable value of such improvements, then such value shall be ascertained by three arbitrators. One of the arbitrators shall be appointed by the former lessee, one by the new lessee, and the third by the two arbitrators so appointed. The reasonable compensation that such arbitrators may charge for their services shall be paid in equal shares by the former lessee and the new lessee. The value of the improvements so ascertained and fixed by the arbitrators shall be binding on both parties; provided, however, that if either party is dissatisfied with the valuation so fixed, the dissatisfied party may, within 10 days of being notified of the arbitrators' decision, appeal from that decision to the board. The decision of the board shall be final. Any costs incurred by the board in reexamining the decision of the arbitrators shall be borne by the former lessee and the new lessee in such proportions as the board may determine.

(3) The provisions of this section shall apply to the holders of permits or licenses for the use of county lands.

History: En. 84-4192.1 by Sec. 3, Ch. 540, L. 1975; R.C.M. 1947, 84-4192.1(3), (4).

7-8-2510. Special provisions relating to oil and gas development. (1) Subject to the provisions of subsection (2), when considered in the best interests of the county, the board may:

(a) enter into agreements for the pooling of acreage with others for unit operations for the production of oil or gas or both and for the apportionment of oil or gas royalties or both on acreage or other equitable basis; and

(b) modify existing leases and leases hereafter entered into with respect to delay rentals, delay drilling penalties, and royalties in accordance with such pooling agreements and such unit plans of operation.

(2) Such agreements shall not change the percentages of royalties to be paid to the county from the percentages as fixed in its leases.

History: En. 84-4192.1 by Sec. 3, Ch. 540, L. 1975; R.C.M. 1947, 84-4192.1(8).

7-8-2511. Procedure for sale of county lands. (1) The board shall make an order for public auction of any lands classified for sale. Such sale shall be held at the front door of the county courthouse.

(2) Notice of the sale shall be given by publishing notice as provided in 7-1-2121. The notice shall describe the land to be sold and the appraised value thereof.

(3) No sale may be made for less than the appraised value of the land, as fixed by the board. The sale shall be for cash or on such terms as the board may approve provided at least 20% of the purchase price shall be paid in cash.

(4) The lessee, permittee, or licensee of any of the lands then subject to a lease, permit, or license shall have a preference to purchase the lands at an amount equal to that bid by the highest bidder at the sale.

History: En. 84-4192.1 by Sec. 3, Ch. 540, L. 1975; R.C.M. 1947, 84-4192.1(5); amd. Sec. 14, Ch. 349, L. 1985.

7-8-2512. Procedure to exchange county lands. (1) Any of the lands classified for exchange by the board may be exchanged for any other lands pursuant to such procedures as the board may adopt. Any procedures adopted by the board for the exchange of land must include public notice as provided under 7-8-2511 and opportunity for public hearing on the proposed exchange.

(2) All such exchanges must be for equivalent value. If the lands sought to be exchanged are not of equivalent value, any difference may be equalized by a cash payment.

History: En. 84-4192.1 by Sec. 3, Ch. 540, L. 1975; R.C.M. 1947, 84-4192.1(6).

7-8-2513. Appraisal of land required — exception. (1) The county commissioners shall, before they sell, exchange, or lease lands under the provisions of this part, cause the lands to be appraised by a qualified, independent person, who may be but is not required to be an employee of the department of revenue, to determine the value of the lands for the purpose of the sale, exchange, or lease.

(2) For the purposes of this section, a renewal of the lease is considered an initial lease if the renewal is for a term exceeding 5 years.

(3) The board of county commissioners may lease mineral interests in land, whether the interests are severed or not, without an appraisal as required by subsection (1).

History: En. 84-4192.2 by Sec. 4, Ch. 540, L. 1975; R.C.M. 1947, 84-4192.2(part); amd. Sec. 1, Ch. 391, L. 1983; amd. Sec. 13, Ch. 27, Sp. L. November 1993.

7-8-2514. Reservations of interest by county. (1) When granting a lease for oil, gas, or other mineral exploration or development, the board may reserve to the county a royalty interest as fixed by agreement between the board and the lessee.

(2) In trading, exchanging, or selling such lands, the board may make such reservations in favor of the county as the board considers proper, including but not limited to reserving to the county of any or all oil, gas, or other mineral or royalty interests; sand, gravel, clay, or other material; rights-of-way or easements for roads, utility lines, and other purposes or uses.

History: En. 84-4192.1 by Sec. 3, Ch. 540, L. 1975; R.C.M. 1947, 84-4192.1(part).

7-8-2515. Apportionment and distribution of revenues from land. All proceeds from any use or disposition of lands pursuant to the terms of this part shall be apportioned and distributed according to the provisions of 7-8-2306.

History: En. 84-4192.1 by Sec. 3, Ch. 540, L. 1975; R.C.M. 1947, 84-4192.1(part).

Part 26
County Forests

7-8-2601. Protection of forests. The board of county commissioners of any county may provide money for the purposes of forest protection, improvement, and management.

History: **En. Sec. 105, Ch. 147, L. 1909; re-en. Sec. 4470, R.C.M. 1921; re-en. Sec. 4470, R.C.M. 1935; R.C.M. 1947, 16-1104.**

7-8-2602. Authorization to create county forests. (1) The board of county commissioners of any county in Montana is hereby authorized to create county forests from any lands in such county which:

(a) are principally valuable for the timber thereon or for the growing of timber; and

(b) have been acquired by such county by tax deed and have been offered for sale at public auction and not sold or have been acquired by such county by exchange for lands acquired by tax deed.

(2) Such county forests shall be established by resolution of the board and may be discontinued by resolution of said board.

History: **En. Sec. 1, Ch. 70, L. 1945; R.C.M. 1947, 28-501.**

7-8-2603. Exchange of tax-deed lands for timber lands. After any lands acquired by the county by tax deed have been offered for sale at public auction and not sold, the board of county commissioners may exchange such lands for other lands which are principally valuable for the timber thereon or for the growing of timber if, in the opinion of such board, it is in the best interests of such county to acquire such other lands for the purpose of creating county forests or for the purpose of consolidating such lands with then-existing county forests.

History: **En. Sec. 2, Ch. 70, L. 1945; R.C.M. 1947, 28-502.**

7-8-2604. Procedure for sale of timber or other crops. (1) Subject to the requirements of subsection (2), the board of county commissioners may sell the timber crop and other crops of county forests under such rules as it may establish. The board may reject any or all bids, or it may award the sale to the highest responsible bidder.

(2) A notice of any proposed sale of timber in excess of 100,000 feet board measure shall be advertised at least once in a newspaper published in the county at least 30 days prior to the closing of bids as specified in said notice. The board shall receive sealed bids up to the hour of the closing of bids.

History: **En. Sec. 3, Ch. 70, L. 1945; R.C.M. 1947, 28-503(part).**

7-8-2605. Formal sale agreement. (1) Upon award of sale, the purchaser shall execute a formal agreement.

(2) The formal agreement shall:

(a) describe the area on which the timber is to be cut, the approximate amount to be cut by species, and the rate for each product of each species;

(b) stipulate that all timber shall be paid for in advance of cutting;

(c) fix a date for termination of the agreement;

(d) define rules of silviculture, cutting, utilization, scaling, and slash disposal; and

(e) incorporate such other rules as in the discretion of the board of county commissioners are essential to the perpetuation of the county forests.

History: **En. Sec. 3, Ch. 70, L. 1945; R.C.M. 1947, 28-503(part).**

7-8-2606. Bond to insure performance of agreement. As a guarantee for the faithful performance of the agreement, the purchaser shall be required to furnish a bond, with sufficient securities, to the county in an amount equal to at least 20% of the estimated value of the timber sold.

History: **En. Sec. 3, Ch. 70, L. 1945; R.C.M. 1947, 28-503(part).**

7-8-2607. Procedure upon breach of agreement. Upon breach of any timber sale agreement, the board of county commissioners is authorized to suspend cutting or removal of the timber and, upon advice and counsel of the county attorney, to take such steps as are deemed by it necessary to adjust the breach or to liquidate the county's claim for damages or to submit the case to the county attorney for collection on the bond.

History: **En. Sec. 4, Ch. 70, L. 1945; R.C.M. 1947, 28-504.**

7-8-2608. Permits for domestic use of dead and down timber. Permits may be issued free of charge to residents and settlers of the county for dead, down, or inferior timber for fuel and domestic purposes, in such quantities and under such restrictions and regulations as the board of county commissioners may approve.

History: **En. Sec. 5, Ch. 70, L. 1945; R.C.M. 1947, 28-505(part).**

7-8-2609. Permits for small commercial timber harvest. Permits may be issued to citizens of Montana for commercial purposes at commercial rates without advertising, under such restrictions and rules as the board of county commissioners may approve, for timber in quantities of 100,000 feet board measure or less. Repeated permits of this kind shall not be issued to avoid advertising and the consequent competition secured thereby.

History: **En. Sec. 5, Ch. 70, L. 1945; R.C.M. 1947, 28-505(part).**

7-8-2610. Distribution of proceeds of timber sales. The proceeds of every such sale or of the issuance of any such permit shall be paid over to the county treasurer who shall apportion and distribute the same in the following manner:

(1) The proceeds of each sale up to the amount of $10 shall be credited to the county general fund to reimburse such for expenditures made therefrom in connection with the holding of such sale or the issuance of such permit.

(2) If there shall be any amount remaining of such proceeds and such remainder is in excess of the aggregate amount of all taxes and assessments accrued against such property for all funds and purposes, without penalty and interest, then so much of such remaining proceeds shall be credited to each fund or purpose as the same would have received had such taxes been paid before becoming delinquent, and all excess shall be credited to the general fund of the county.

(3) If there shall be any amount remaining of such proceeds and such remainder is less in amount than the aggregate amount of all taxes and assessments accrued against such property for all funds and purposes, without penalty or interest, such proceeds shall be prorated between such funds and purposes in the proportion that the amount of taxes and assessments accrued

against such property for each such fund or purpose bears to the aggregate amount of taxes and assessments accrued against such property for all funds and purposes.

History: En. Sec. 6, Ch. 70, L. 1945; R.C.M. 1947, 28-506.

7-8-2611. Construction of part. Nothing in this part shall be construed as repealing part 23 of chapter 8 or Title 76, chapter 13, parts 1 and 2.

History: En. Sec. 7, Ch. 70, L. 1945; R.C.M. 1947, 28-507.

Part 27

County Land Advisory Boards

7-8-2701. State policy for resource management. It is hereby declared to be the policy of the state of Montana:

(1) to promote the conservation of the natural resources of the state;

(2) to provide for the conservation, protection, and development of forage plants and for the beneficial utilization thereof for grazing by livestock, under such regulations as may be considered necessary;

(3) to put into crop production only such lands as are properly fitted therefor;

(4) to encourage the storage and conservation of water for livestock and irrigation;

(5) to place the farming and livestock industries upon a permanent and solid foundation;

(6) to extend preference in sales and leases of lands to resident farmers, stockmen, and taxpayers;

(7) to gradually restore to private ownership the immense areas of lands which have passed into county ownership because of tax delinquencies.

History: En. Sec. 5, Ch. 67, L. 1933; re-en. Sec. 4573.5, R.C.M. 1935; R.C.M. 1947, 16-1505.

7-8-2702. Definitions. (1) In this part, the term "board" shall mean the county land advisory board.

(2) In this part, the term "lands" shall mean all lands now owned by the respective counties which have been acquired by the counties through tax deed proceedings and any lands to be hereafter acquired by the same means and all lands acquired by the respective counties by deed, exchange, or in any manner whatsoever, excepting, however, such lands as are owned or may be acquired for the regular conduct of county affairs.

History: En. Sec. 2, Ch. 67, L. 1933; re-en. Sec. 4573.2, R.C.M. 1935; R.C.M. 1947, 16-1502.

7-8-2703. Creation of county land advisory boards. (1) There is hereby created in each county a department of county government of the state of Montana, to be known and designated as "the county land advisory board".

(2) The general purposes of this department shall be to cooperate with the board of county commissioners of each county in administering lands belonging to the respective counties.

History: En. Sec. 1, Ch. 67, L. 1933; re-en. Sec. 4573.1, R.C.M. 1935; R.C.M. 1947, 16-1501.

7-8-2704. Membership of land advisory board. The board of each county shall consist of five residents of the county to be appointed by the judge of the district court.

History: En. Sec. 3, Ch. 67, L. 1933; re-en. Sec. 4573.3, R.C.M. 1935; R.C.M. 1947, 16-1503(part); amd. Sec. 12, Ch. 311, L. 1979.

7-8-2705. Term of office of board members. (1) The citizen members first appointed pursuant to 7-8-2704 serve the following terms:

(a) two for a 2-year term;

(b) two for a 4-year term; and

(c) one for a 6-year term.

(2) On the expiration of the terms of the initial appointees, the succeeding members shall be appointed for the term of 6 years.

History: En. Sec. 3, Ch. 67, L. 1933; re-en. Sec. 4573.3, R.C.M. 1935; R.C.M. 1947, 16-1503(part); amd. Sec. 13, Ch. 311, L. 1979.

7-8-2706. Compensation of board members. The members shall serve without pay.

History: En. Sec. 3, Ch. 67, L. 1933; re-en. Sec. 4573.3, R.C.M. 1935; R.C.M. 1947, 16-1503(part).

7-8-2707. Organization of board — conduct of business. (1) The board shall, from its membership, select a chairman. The county clerk shall be the clerk of said board.

(2) The board shall hold regular meetings on the first Wednesday following the first Monday of each month and may hold meetings whenever deemed necessary upon call of the chairman or a majority of the members. Three members of the board shall constitute a quorum for the transaction of business. The board may adopt whatever rules it deems proper for the conduct of its meetings.

(3) The county clerk, as clerk of the advisory board, shall keep the minutes of all meetings thereof and be custodian of all its records. It shall be the duty of the board to keep a record of the minutes of all meetings thereof in a suitable book, provided by the board of county commissioners for that purpose, and to preserve all important documents, maps, plats, and papers.

History: En. Sec. 4, Ch. 67, L. 1933; re-en. Sec. 4573.4, R.C.M. 1935; R.C.M. 1947, 16-1504.

7-8-2708. Function of land advisory board. (1) The board shall advise boards of county commissioners in the direction, control, care, management, appraisal, lease, sale, exchange, and disposition of all lands, when so requested by said board of county commissioners.

(2) The board may recommend the examination, classification, and appraisal of such lands as in its opinion have not previously been properly examined, classified, and appraised.

(3) The board may be called upon by boards of county commissioners to assist in making exchanges of lands with other owners.

History: (1)En. Sec. 3, Ch. 67, L. 1933; re-en. Sec. 4573.3, R.C.M. 1935; Sec. 16-1503, R.C.M. 1947; (2)En. Sec. 6, Ch. 67, L. 1933; re-en. Sec. 4573.6, R.C.M. 1935; Sec. 16-1506, R.C.M. 1947; (3)En. Sec. 9, Ch. 67, L. 1933; re-en. Sec. 4573.9, R.C.M. 1935; Sec. 16-1509, R.C.M. 1947; R.C.M. 1947, 16-1503(part), 16-1506, 16-1509.

7-8-2709. Grazing and agricultural uses of county lands. (1) The board may cooperate with boards of county commissioners in establishing grazing districts or entering into agreements with other landowners for the establishment of grazing districts whereby county lands may be leased either on a per-head or per-acre basis.

(2) The board may act in an advisory capacity in fixing the fees, terms, and conditions of grazing and agricultural leases.

History: (1)En. Sec. 7, Ch. 67, L. 1933; re-en. Sec. 4573.7, R.C.M. 1935; Sec. 16-1507, R.C.M. 1947; (2)En. Sec. 8, Ch. 67, L. 1933; re-en. Sec. 4573.8, R.C.M. 1947; Sec. 16-1508, R.C.M. 1947; R.C.M. 1947, 16-1507, 16-1508.

Parts 28 through 40 reserved

Part 41

Municipal Buildings

7-8-4101. Construction, lease, and management of municipal buildings. The city or town council has power to build or hire all necessary buildings for the use of the city or town and to heat and light the same.

History: En. Subd. 5, Sec. 5039, R.C.M. 1921; amd. Sec. 1, Ch. 115, L. 1925; amd. Sec. 1, Ch. 20, L. 1927; re-en. Sec. 5039.4, R.C.M. 1935; R.C.M. 1947, 11-905.

Part 42

Disposal and Lease of Municipal Property

7-8-4201. Disposal or lease of municipal property. (1) Subject to the provisions of subsection (2), the city or town council may sell, dispose of, or lease any property belonging to the city or town.

(2) (a) The lease or transfer must be made by an ordinance or resolution passed by a two-thirds vote of all the members of the council.

(b) Except for property acquired by tax deed, if the property is held in trust for a specific purpose, the sale or lease must be approved by a majority vote of the electors of the municipality voting at an election called for that purpose. The election must be held in conjunction with a regular or primary election.

(3) This section may not be construed to abrogate the power of the board of park commissioners to lease all lands owned by the city that were acquired for parks within the limitations prescribed by 7-16-4223.

History: En. Subd. 62, Sec. 5039, R.C.M. 1921; amd. Sec. 1, Ch. 115, L. 1925; amd. Sec. 1, Ch. 20, L. 1927; re-en. Sec. 5039.61, R.C.M. 1935; amd. Sec. 1, Ch. 35, L. 1937; R.C.M. 1947, 11-964; amd. Sec. 14, Ch. 311, L. 1979; amd. Sec. 1, Ch. 305, L. 1993; amd. Sec. 38, Ch. 387, L. 1995.

Compiler's Comments

1995 Amendment: Chapter 387 in (2)(b) inserted "The election must be held in conjunction with a regular or primary election."

CHAPTERS 9 AND 10

RESERVED

CHAPTER 11

GENERAL PROVISIONS RELATED TO SERVICES

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Part 1
Interlocal Agreements

Part Cross-References

Intergovernmental cooperation, Art. XI, sec. 7, Mont. Const.

Contracts for detention center services, 7-32-2243.

7-11-101. Short title. This part shall be known and cited as the "Interlocal Cooperation Act".

History: En. Sec. 2, Ch. 82, L. 1967; R.C.M. 1947, 16-4902.

7-11-102. Purpose. It is the purpose of this part to permit local governmental units to make the most efficient use of their powers by enabling them to cooperate with other local governmental units on a basis of mutual advantage and thereby to provide services and facilities in a manner and pursuant to forms of governmental organization that will accord best with geographic, economic, population, and other factors influencing the needs and development of local communities.

History: En. Sec. 1, Ch. 82, L. 1967; R.C.M. 1947, 16-4901.

7-11-103. Definition. For the purposes of this part, the term "public agency" shall mean any political subdivision, including municipalities, counties, school districts, and any agency or department of the state of Montana.

History: En. Sec. 3, Ch. 82, L. 1967; R.C.M. 1947, 16-4903.

7-11-104. Authorization to create interlocal agreements. Any one or more public agencies may contract with any one or more other public agencies to perform any administrative service, activity, or undertaking which any of said public agencies entering into the contract is authorized by law to perform. Such contract shall be authorized and approved by the governing body of each party to said contract. Such contract shall set forth fully the purposes, powers, rights, obligations, and responsibilities of the contracting parties.

History: En. Sec. 4, Ch. 82, L. 1967; R.C.M. 1947, 16-4904(part).

7-11-105. Detailed contents of interlocal agreements. The contract authorized by 7-11-104 shall specify the following:

(1) its duration;

(2) the precise organization, composition, and nature of any separate legal entity created thereby;

(3) the purpose or purposes of said interlocal contract;

(4) the manner of financing the joint or cooperative undertaking and establishing and maintaining a budget therefor;

(5) the permissible method or methods to be employed in accomplishing the partial or complete termination of the agreement and for disposing of property upon such partial or complete termination;

(6) provision for an administrator or a joint board responsible for administering the joint or cooperative undertaking, including representation of the contracting parties on said joint board;

(7) the manner of acquiring, holding, and disposing of real and personal property used in the joint or cooperative undertaking;

(8) any other necessary and proper matters.

History: En. Sec. 4, Ch. 82, L. 1967; R.C.M. 1947, 16-4904(1) thru (8).

7-11-106. Repealed. Sec. 2, Ch. 83, L. 1991.

History: En. Sec. 4, Ch. 82, L. 1967; R.C.M. 1947, 16-4904(9).

7-11-107. Filing of interlocal agreement. The interlocal contract made pursuant to this part must be filed with:

(1) the county clerk and recorder of the county or counties where the political agencies are situated; and

(2) the secretary of state.

History: En. Sec. 4, Ch. 82, L. 1967; R.C.M. 1947, 16-4904(10); amd. Sec. 1, Ch. 83, L. 1991.

7-11-108. Authorization to appropriate funds for purpose of interlocal agreement. Any public agency entering into an interlocal contract pursuant to this part may appropriate funds for and may sell, lease, or otherwise give or supply to the administrative board created for the purpose of performance of said contract and may provide such personnel or services therefor as may be within its legal power to furnish.

History: En. Sec. 4, Ch. 82, L. 1967; R.C.M. 1947, 16-4904(11).

Part 2

Interlocal Cooperation Commission

7-11-201. Statement of policy. It is hereby declared to be the public policy of Montana to provide for the residents of the state the means of improving their local governments so that essential services can be provided more effectively and economically. The growth of urban population, the necessity to maintain local governmental services in areas of increasing population on one hand and in areas of decreasing population on the other, and the movement of people into suburban areas have created varied problems in the provision of public services and facilities which often cannot be met adequately by individual units of local government.

History: En. Sec. 1, Ch. 129, L. 1969; R.C.M. 1947, 11-4401(1).

7-11-202. Purpose. It is the purpose of this part to provide a method whereby the residents of local areas in Montana may propose local solutions to the common problems referred to in 7-11-201 in order that proper growth and development of the state may be assured and the health and welfare of the people therein secured.

History: En. Sec. 1, Ch. 129, L. 1969; R.C.M. 1947, 11-4401(2).

7-11-203. Definitions. As used in this part, the following definitions apply:

(1) "Commission" means an interlocal cooperation commission established pursuant to 7-11-204.

(2) "Principal city" means the city having the largest population in the county under consideration according to the latest federal decennial census.

(3) "Unit of local government" means a county, city, or town.

History: En. Sec. 2, Ch. 129, L. 1969; R.C.M. 1947, 11-4402.

7-11-204. Authorization for establishment of interlocal cooperation commissions. An interlocal cooperation commission may be established in either of two ways:

(1) A joint resolution providing for the establishment of an interlocal cooperation commission may be adopted by a separate vote of a majority of the governing bodies of the county, cities, and towns having any jurisdiction in the county under consideration. A certified copy of such resolution or certified copies of such concurring resolutions shall be transmitted to the clerk and recorder of the county, and an interlocal cooperation commission shall be deemed to be authorized.

(2) (a) A petition requesting the establishment of an interlocal cooperation commission shall be signed by at least 10% of the qualified voters within the county registered for the preceding general election and shall be filed with the clerk and recorder of the county.

(b) Upon receipt of such a petition, the clerk and recorder shall examine the source and certify to the sufficiency of the signatures thereon. Within 30 days following receipt of such petition, the clerk and recorder shall transmit the same to the board of county commissioners and to the governing bodies of all cities and towns having any jurisdiction in the county, together with his certificate as to the sufficiency thereof, and an interlocal cooperation commission shall be deemed to be authorized.

History: En. Sec. 3, Ch. 129, L. 1969; R.C.M. 1947, 11-4403(part).

7-11-205. Limitation on number of interlocal cooperation commissions. Only one commission may be established in a county at any one time.

History: En. Sec. 3, Ch. 129, L. 1969; R.C.M. 1947, 11-4403(part).

7-11-206. Term of commission. All commissions shall terminate 5 years from the date of their establishment. However, a commission, upon completion of its duties, may terminate earlier by a vote (favorable to such earlier termination) of three-fourths of the members.

History: En. Sec. 16, Ch. 129, L. 1969; amd. Sec. 2, Ch. 70, L. 1971; R.C.M. 1947, 11-4416.

7-11-207. Composition of commission. Any interlocal cooperation commission established pursuant to this part shall consist of members to be selected as follows:

(1) four members selected by the county commissioners;

(2) four members appointed by the mayor of the principal city and confirmed by the governing body of the city;

(3) one member appointed by the mayor of each of the other cities and towns in the county and confirmed by the governing body of the city or town;

(4) one member, who shall be chairman of the interlocal cooperation commission, selected by the other members of the commission at their initial meeting.

History: En. Sec. 4, Ch. 129, L. 1969; R.C.M. 1947, 11-4404(1).

7-11-208. Qualifications of members of commission. (1) Each member shall reside, at the time of his appointment, within the county if selected by the board of county commissioners or within the city or town by which appointed.

(2) No member shall be an official or employee of any unit of local government.

History: En. Sec. 4, Ch. 129, L. 1969; R.C.M. 1947, 11-4404(2), (3).

7-11-209. Time of appointment. The members of the interlocal cooperation commission shall be appointed within 60 days after the commission is authorized.

History: En. Sec. 5, Ch. 129, L. 1969; R.C.M. 1947, 11-4405.

7-11-210. Vacancies. In case of a vacancy for any cause, a new member shall be appointed in the same manner as the member he replaces.

History: En. Sec. 7, Ch. 129, L. 1969; R.C.M. 1947, 11-4407(1).

7-11-211. Compensation for members of commission. Members of a commission shall receive no compensation but shall receive actual and necessary travel and other expenses incurred in the performance of official duties.

History: En. Sec. 7, Ch. 129, L. 1969; R.C.M. 1947, 11-4407(2).

7-11-212. Organization of commission — meetings. (1) Not later than 80 days after the commission is authorized, the members of the commission shall meet and organize at a time which shall be set by the board of county commissioners.

(2) At the first meeting of the commission, one of the members appointed by the board of county commissioners shall be designated by that body to serve as temporary chairman. As its first official act, the commission shall select a chairman from outside its own membership.

(3) Further meetings of the commission shall be held upon call of the chairman, the vice-chairman in the absence or inability of the chairman, or a majority of the members of the commission.

History: En. Sec. 6, Ch. 129, L. 1969; R.C.M. 1947, 11-4406.

7-11-213. Conduct of business. (1) All meetings of the commission shall be open to the public.

(2) A majority of the members of the commission shall constitute a quorum for the transaction of business.

(3) Each member shall have one vote. A favorable vote by a majority of the entire commission shall be necessary for any action permitted by 7-11-230, but other actions may be by a majority of those present and voting.

(4) Each commission may adopt such other rules for its proceedings as it deems desirable.

History: En. Sec. 7, Ch. 129, L. 1969; R.C.M. 1947, 11-4407(3) thru (5).

7-11-214 through 7-11-220 reserved.

7-11-221. Powers and duties of commission. A commission shall have the following powers and duties:

(1) to contract and cooperate with other public or private agencies, as it considers necessary for the rendition and affording of such services, facilities, studies, and reports to the commission as will best assist it to carry out the purposes for which the commission was established;

(2) to consult and retain such experts and to employ such executive, clerical, and other staff as, in the commission's judgment, may be necessary;

(3) to accept and expend money from any public or private source, including the federal government;

(4) to do any and all other things as are consistent with and reasonably required to perform its functions under this part.

History: En. Sec. 14, Ch. 129, L. 1969; R.C.M. 1947, 11-4414(part).

7-11-222. Management of commission finances. All money received by the commission shall be deposited with the county treasurer in the county. The county treasurer is authorized to disburse funds of the commission on its order.

History: En. Sec. 14, Ch. 129, L. 1969; R.C.M. 1947, 11-4414(part).

7-11-223. Authorization to make appropriations for commission. The units of local government within the county under consideration and the county may appropriate funds for the necessary expenses of the commission.

History: En. Sec. 15, Ch. 129, L. 1969; R.C.M. 1947, 11-4415.

7-11-224. Preparation of comprehensive program. (1) The commission shall prepare a comprehensive program for the furnishing of local governmental services, on both countywide and urban area bases, as it deems desirable.

(2) Within 3 years after the date of its organization, the commission shall complete the preparation of its proposals for the provision of both urban area services and countywide services and shall provide for adequate publication and explanation of its program.

History: (1)En. Sec. 9, Ch. 129, L. 1969; Sec. 11-4409, R.C.M. 1947; (2)En. Sec. 12, Ch. 129, L. 1969; amd. Sec. 1, Ch. 70, L. 1971; Sec. 11-4412, R.C.M. 1947; R.C.M. 1947, 11-4409, 11-4412(part).

7-11-225. Considerations in preparation of proposals. (1) A commission shall consider the various areas included within the county, including areas incorporated as municipalities, unincorporated areas essentially urban in nature, unincorporated areas with both urban and rural characteristics, and predominantly rural areas.

(2) In the formation of its proposals, which can include arrangements for countywide governmental services and urban area services in both incorporated and unincorporated areas, a commission shall study and take into consideration:

(a) the existing land use within the county, including the location of highways and natural geographic barriers to and routes for transportation, making use wherever possible of comprehensive land use plans prepared for the area by organized planning boards or other reliable surveys;

(b) the need for organized local governmental services, the present cost and adequacy of local governmental services and controls in the area, probable future needs for such services and controls, and the probable effect of alternative courses of action on the cost and adequacy of services and controls in the areas concerned and in adjacent areas;

(c) population density, distribution, and growth; per capita assessed valuation; and the likelihood of significant growth in the areas concerned and in adjacent incorporated and unincorporated areas;

(d) the boundaries of existing units of local government;

(e) maintenance of citizen access to, control of, and participation in local government;

(f) such other matters as might affect provision of local governmental services on an equitable basis and provide more efficient and economical administration thereof.

History: En. Sec. 8, Ch. 129, L. 1969; R.C.M. 1947, 11-4408.

7-11-226. Consideration of property and debts. The commission shall:

(1) determine the value and amount of all property used in performing any local governmental service and all bonded and other indebtedness of units of local government attributable to the acquisition of such property and affected by its comprehensive program for both urban area services and countywide services; and

(2) determine and provide in its proposed program for assumption or equitable adjustment of such property and debts of each unit of local government affected.

History: En. Sec. 11, Ch. 129, L. 1969; R.C.M. 1947, 11-4411.

7-11-227. Furnishing of information to commission. Upon request of the chairman of the commission, all state agencies, all counties and other units of local government, and the officers and employees thereof shall furnish the commission such information as may be necessary for carrying out its functions and which may be available to or procurable by such agencies or units of government.

History: En. Sec. 14, Ch. 129, L. 1969; R.C.M. 1947, 11-4414(part).

7-11-228. Public hearings on proposed program — notice. Notice of hearings shall be published as provided in 7-1-2121.

History: En. Sec. 12, Ch. 129, L. 1969; amd. Sec. 1, Ch. 70, L. 1971; R.C.M. 1947, 11-4412(part); amd. Sec. 15, Ch. 349, L. 1985.

7-11-229. Recommendations to implement program. In preparing its comprehensive program for furnishing local governmental services, a commission may recommend one or more of the following courses of action:

(1) performance of one or more services by any existing unit of local government;

(2) consolidation of specified services by transfer of functions between local units of government, by creation of joint administrative agencies, or by contractual agreements;

(3) consolidation of any existing special service district with one or more other special service districts to perform all of the services provided by any of them;

(4) creation of a new special service district to perform one or more services, with provision for the dissolution of any existing special service

districts performing like service or services within the proposed boundaries of such new district;

(5) annexation of unincorporated territory to any existing city or town;

(6) consolidation of any existing cities and towns with any other existing cities and towns;

(7) consolidation of any cities and towns with the county in which they lie;

(8) creation of a permanent council of governments consisting of members of the governing bodies of the units of local government within and including the county concerned;

(9) creation of a unified government for the entire county, vested with:

(a) any and all powers which cities are or may hereafter be authorized or required to exercise under the constitution and general laws of Montana; and

(b) any and all powers which counties are or may hereafter be authorized or required to exercise under the constitution and general laws of Montana;

(10) any other change it considers desirable involving creation, dissolution, or consolidation of units of local government in the county under consideration or involving alteration of their boundaries, powers, and responsibilities, consistent with provisions of the constitution of Montana.

History: En. Sec. 10, Ch. 129, L. 1969; R.C.M. 1947, 11-4410.

7-11-230. Procedure for making recommendations. After public hearing, the commission shall submit proposals contained in its comprehensive program for action as follows:

(1) If the comprehensive plan of the commission includes the creation of or any change, alteration, consolidation, dissolution, or annexation with respect to any unit of local government or special district a procedure for which is provided by law upon petition by the people and an election, the commission shall make public its proposal or proposals to the people in the area or areas affected.

(2) If the comprehensive plan includes the consolidation or transfer of the administrative and financial responsibilities for services between or among municipalities and counties, the commission shall make public its recommendation to the electorate of the local governments for referenda as provided for in 7-11-302.

(3) If the comprehensive plan includes any change, alteration, interlocal agreement, consolidation, dissolution, or annexation with respect to any unit of local government or special district which can be carried into effect under existing law by action of the governing bodies of the units affected, the commission shall recommend the necessary action to the governing body or bodies of the units of government concerned.

(4) If the comprehensive plan includes the creation of or any change, alteration, consolidation, dissolution, or annexation with respect to any unit of local government or special district which necessitates enabling legislation or amendments to the general laws or constitution of Montana, the commission shall make such recommendation or recommendations to the ensuing legislature.

History: En. Sec. 13, Ch. 129, L. 1969; R.C.M. 1947, 11-4413; amd. Sec. 11, Ch. 314, L. 1981.

Part 3
Consolidation and Transfer of Services

7-11-301. Purpose. (1) The purpose of this part is to provide procedures for the electors of local governments to consolidate or transfer the administrative and financial responsibility for services between or among municipalities and counties.

(2) Nothing in this part is to be construed as in any way affecting the authority of local governments to enter into interlocal agreements or contracts as provided by law.

History: En. Sec. 1, Ch. 314, L. 1981.

7-11-302. Consolidation and transfer of services. (1) A consolidation or transfer of services between or among municipalities may be proposed by a petition of the electors or on a recommendation of an interlocal cooperation commission as provided in 7-11-230.

(2) A petition or recommendation may propose to consolidate or transfer the administrative or financial responsibility or any administrative service, activity, or undertaking that any of the local governments included in the proposed consolidation or transfer are authorized by law to perform.

(3) Notwithstanding the requirements of 7-32-101, a petition or recommendation may propose to consolidate or transfer any law enforcement administrative service, activity, or undertaking between or among local governments.

History: En. Sec. 2, Ch. 314, L. 1981.

7-11-303. Petition for consolidation or transfer of services. (1) A petition or recommendation for the consolidation or transfer of the administrative and financial responsibility for services between or among local governments may be presented to the governing bodies of the local governments affected by the consolidation or transfer.

(2) A petition must be signed by at least 15% of the electors registered at the last general election of the local governments affected by the proposed consolidation or transfer.

(3) Whenever the consolidation or transfer of a service between a county and municipality is proposed by petition, the petition must be signed by at least 15% of the electors residing in each municipality included in the service consolidation or transfer and 15% of the electors residing in the remainder of the county.

(4) Upon determination of the sufficiency of the petition or upon receipt of a recommendation of the interlocal cooperation commission, the governing body of each of the local governments affected by the proposed consolidation or transfer shall call an election on the transfer or consolidation as provided in 7-11-307.

History: En. Sec. 3, Ch. 314, L. 1981.

7-11-304. Service plan. (1) The petitioners or the interlocal cooperation commission shall prepare a service plan governing the service or activity proposed to be transferred or consolidated.

(2) The plan shall provide:

(a) the nature of service or function to be consolidated or transferred;

(b) the effective date of the proposed consolidation or transfer;

(c) the responsibility for administration of the service to be consolidated or transferred, including the succession of the performance of duties currently performed by an elected officer if the elective status of an office is affected;

(d) the manner in which affected employees currently engaged in the performance of the function will be transferred, reassigned, or otherwise treated;

(e) the manner in which real property, facilities, equipment, or other personal property required in the exercise of the function are to be transferred, sold, or otherwise disposed of;

(f) the method of financing, establishing, and maintaining a budget for the service; and

(g) other legal, financial, and administrative arrangements necessary to effect the transfer in an orderly and equitable manner.

(3) The service plan may include provisions for an administrator or joint board responsible for administering any joint or cooperative undertaking.

(4) The service plan shall be attached to the petition or to the interlocal cooperation commission's recommendation when it is submitted to the governing bodies affected by the service consolidation or transfer.

History: En. Sec. 4, Ch. 314, L. 1981.

7-11-305. Availability of petition or recommendation and service plan. (1) Sufficient copies of the petition or recommendation of the interlocal cooperation commission proposing a service consolidation or transfer and the service plan must be made available to the public for inspection at convenient locations and at reasonable hours to provide all interested persons an opportunity to review the recommendations and documents. The copies must be available no later than 30 days prior to an election on the proposal if an election is to be held. If the election is held, it must be held in conjunction with a regular or primary election.

(2) Each local government affected by the proposal may distribute copies of the service plan to its residents.

History: En. Sec. 5, Ch. 314, L. 1981; amd. Sec. 39, Ch. 387, L. 1995.

Compiler's Comments

1995 Amendment: Chapter 387 in (1), at end, inserted "If the election is held, it must be held in conjunction with a regular or primary election"; and made minor changes in style.

7-11-306. Publication of summary and comparison. (1) A summary of the recommendations contained in a petition or recommendation and the service plan proposing the consolidation or transfer of a service or activity must be published at least twice in a newspaper of general circulation in each local government affected by the proposal. The publication must be made during the 2 weeks preceding the election.

(2) The summary must contain a description of the recommendations, a comparison of the existing and proposed methods of service delivery, and a list of locations where the full proposal may be seen or obtained.

(3) The cost of publication required by this section shall be shared by the affected local governments.

History: En. Sec. 6, Ch. 314, L. 1981.

7-11-307. Election on service consolidation or transfer. (1) The governing bodies of each local government affected by a proposed service consolidation or transfer shall jointly call a special election on the question of service consolidation or transfer, to be held in conjunction with a regular or primary election. The county election administrator shall prepare and print notices of the special election.

(2) The cost of the election must be shared by the affected local governments in proportionate shares as agreed to by the governing bodies of the local governments.

History: En. Sec. 7, Ch. 314, L. 1981; amd. Sec. 17, Ch. 250, L. 1985; amd. Sec. 40, Ch. 387, L. 1995.

Compiler's Comments

1995 Amendment: Chapter 387 in first sentence of (1), after "held", substituted "in conjunction with a regular or primary election" for "no less than 75 or more than 120 days of the date of the filing of the petition under 7-11-303 or no less than 75 or more than 120 days of the receipt by the local government of the interlocal cooperation commission recommendation" and deleted former second sentence that read: "The special election may be held in conjunction with any other election"; and made minor changes in style.

7-11-308. General ballot requirements. (1) The question of adopting a service consolidation or transfer shall be submitted to the electors of the local governments affected by the proposal in substantially the following form:

Shall the plan for (consolidation or transfer) of (insert name of service or function) services proposed in the (petition or recommendation of the interlocal cooperation commission) and service plan to the (insert the names of local government units) be adopted?

☐ YES.

☐ NO.

(2) If the question of adopting a service consolidation or transfer alters the elective status of any elected county official, it shall be submitted to the electors of the local governments affected by the proposal in substantially the following form:

☐ For adoption of (consolidation or transfer) of (insert name of service or function) proposed in the (petition or recommendation of the interlocal cooperation commission) and service plan to the (insert names of local government units) in which the office of (insert name of county office) is (insert description of changes in elective status).

☐ For existing service delivery arrangements.

(3) In any election involving the question of service consolidation or transfer, an affirmative vote of a simple majority of those voting on the question is required for adoption.

(4) If the electors disapprove the proposed service consolidation or transfer, each local government retains its existing service delivery method until changed or modified as provided by law.

(5) Except for nonsubstantive adjustments required to insure efficient and effective operations, a service consolidation or transfer effected by the proce-

dures contained in this part may be amended or otherwise changed only in the same manner as required for its adoption.

History: **En. Sec. 8, Ch. 314, L. 1981.**

7-11-309. Effect of adoption of service consolidation or transfer. The adoption of a service consolidation or transfer does not affect the validity of any bond, debt, contract, collective bargaining agreement, obligation, or cause of action accrued or established by any affected local government prior to the consolidation or transfer.

History: **En. Sec. 9, Ch. 314, L. 1981.**

7-11-310. Judicial review. (1) Judicial review to determine the validity of the procedures used in adopting any service consolidation or transfer may be initiated by petition in district court of 10 or more registered electors of each local government affected by the consolidation or transfer brought within 60 days after the election adopting the service consolidation or transfer. If no petition is filed within that period, compliance with all the procedures required by 7-11-303 through 7-11-310 and the validity of the manner in which the service consolidation or transfer was approved is conclusively presumed.

(2) It is presumed that proper procedure was followed and all procedural requirements were met. The adoption of a service consolidation or transfer may not be considered invalid because of any procedural error or omission unless it is shown that the error or omission materially and substantially affected its adoption.

History: **En. Sec. 10, Ch. 314, L. 1981.**

Parts 4 through 10 reserved

Part 11

Multijurisdictional Service Districts

7-11-1101. Authority to form multijurisdictional service district. Municipalities and counties may form multijurisdictional service districts to provide:

(1) a higher level of service than is available through the local governments forming such a district; or

(2) services that are not available through the governments forming such a district.

History: **En. Sec. 1, Ch. 425, L. 1985.**

7-11-1102. Services that may be provided. (1) A multijurisdictional service district may provide only those services that are authorized to be provided by local governments.

(2) The services that a multijurisdictional service district may provide are:

(a) recreation programs other than park and recreation programs in a county park district established under Title 7, chapter 16, part 24;

(b) road, street, and highway maintenance;

(c) libraries;

(d) jails;

(e) dog control programs;

(f) ambulance service; and

(g) dispatch service.

History: En. Sec. 2, Ch. 425, L. 1985; amd. Sec. 8, Ch. 425, L. 1985; amd. Sec. 1, Ch. 193, L. 1991; amd. Sec. 1, Ch. 116, L. 1993.

7-11-1103 and 7-11-1104 reserved.

7-11-1105. Creation of district. (1) A multijurisdictional service district is established by an interlocal agreement among participating jurisdictions, as authorized by an ordinance of each of the jurisdictions, to form the district. An ordinance, for the purposes of this part, includes a resolution of a county not having the power to enact ordinances.

(2) The authorizing ordinance may be passed by the governing body of the jurisdiction or it may be initiated by a petition signed by 15% of the resident property taxpayers of the area proposed for the district in each jurisdiction.

(3) Prior to determining the boundary of the district, the governing body or persons preparing a petition shall consult with the county election administrator to prepare a description of the boundary of the proposed district. As far as practical, the boundary shall follow precinct, school district, municipal, and county lines. The boundary description must be mapped and clearly described.

History: En. Sec. 5, Ch. 425, L. 1985.

7-11-1106. Ordinance and petition requirements. An ordinance or petition for an ordinance to authorize a multijurisdictional service district must include:

(1) the name of the proposed district;
(2) the services to be provided by the proposed district;
(3) a statement of convenience and necessity;
(4) a boundary map of the proposed district;
(5) estimated costs of services and methods of financing the district;
(6) the method of administering the proposed district; and
(7) the maximum property tax mill levy for property taxes in the district.

History: En. Sec. 6, Ch. 425, L. 1985.

7-11-1107. Adoption of ordinance — protest. (1) Upon receipt of a petition to enact an authorizing ordinance, the governing body of each jurisdiction may either adopt the substantive provisions of the petition as an ordinance or decline to adopt an authorizing ordinance for the district. The action on the petition is subject to the provisions of initiative and referendum as provided in 7-5-131 through 7-5-137.

(2) (a) Upon adoption of a multijurisdictional service district authorizing ordinance, notice must be published in a newspaper of general circulation in the jurisdiction.

(b) Each notice must set forth the text or substance of the ordinance and the text of subsection (2)(c).

(c) Within 30 days of the publication of the notice, electors or property owners of each portion of the proposed district may submit written protests to the local government clerk. If more than 50% of the electors, or the owners of more than 50% of the taxable value of the property, in the affected portion of any one of the jurisdictions proposed for inclusion in the district protest the ordinance of that jurisdiction, the ordinance is void.

History: En. Sec. 7, Ch. 425, L. 1985.

7-11-1108 through 7-11-1110 reserved.

7-11-1111. Administration. (1) A multijurisdictional service district must be administered according to an interlocal agreement among the participating jurisdictions within the district.

(2) The governing body of a multijurisdictional service district may consist of the entire membership of all governing bodies of the participating jurisdictions, or it may be a joint board with representation as set forth in the interlocal agreement forming the district.

(3) An interlocal agreement under this part may enlarge an existing service district or city or county library, but it may not supersede or void an existing contract or interlocal agreement under which the same service is currently provided to residents of one or more of the participating jurisdictions.

(4) A library established under this part as a multijurisdictional service must be administered according to the provisions of 22-1-305 through 22-1-317.

History: En. Sec. 3, Ch. 425, L. 1985.

7-11-1112. Financing. (1) Local governments organizing a multijurisdictional service district are authorized to levy property taxes in an amount not to exceed that authorized for the district in 7-11-1106, and to appropriate funds derived from other than general tax revenues for the operation of the district. Property taxes levied for a library established under this part as a multijurisdictional service must be added to taxes levied under 22-1-304.

(2) A property tax levied for the purpose of financing the district must, for all agricultural property having an area greater than 10 acres, be levied only on the principal residential dwelling, if any, on such property.

History: En. Sec. 4, Ch. 425, L. 1985.

CHAPTER 12

IMPROVEMENT DISTRICTS

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Parts 1 through 10 reserved

Part 11

Business Improvement Districts

7-12-1101. Short title. This part may be cited as the "Business Improvement District Act".

History: En. Sec. 1, Ch. 656, L. 1985.

7-12-1102. Purpose. The purpose of this part is to provide for the creation of business improvement districts having the purposes and powers provided in this part that will serve a public use; will promote the health, safety, prosperity, security, and general welfare of the inhabitants thereof and of the people of this state; and will be of special benefit to the property within the boundaries of any district created pursuant to the provisions of this part.

History: En. Sec. 2, Ch. 656, L. 1985.

7-12-1103. Definitions. As used in this part, the following definitions apply:

(1) "Appointing authority" means the mayor in the case of a municipality, the board of county commissioners in the case of a county, or the chief executive of a consolidated city-county government.

(2) "Board" means the board of trustees created in 7-12-1121.

(3) "Business" means all types of business, including professions.

(4) "District" means a business improvement district created under this part.

(5) "Governing body" means the legislative body of a local government.

(6) "Local government" means a municipality, a county, or a consolidated city-county government.

(7) "Owner" means a person in whom appears the legal title to real property by deed duly recorded in the county records or a person in possession of real property under claim of ownership for himself or as the personal representative, agent, or guardian of the owner.

History: **En. Sec. 3, Ch. 656, L. 1985; amd. Sec. 17, Ch. 370, L. 1987.**

7-12-1104 through 7-12-1110 reserved.

7-12-1111. Establishment or expansion of district. (1) Upon receipt of a petition signed by the owners of more than 60% of the area of the property proposed in the petition to be included in a district or in the expansion of a district, a governing body shall establish a district or expand a district as provided in this part.

(2) The boundaries of a district must comply with applicable zoning regulations, and the district may not include areas that are zoned primarily as residential areas.

History: **En. Sec. 4, Ch. 656, L. 1985; amd. Sec. 1, Ch. 79, L. 1991.**

Cross-References

Local government ordinances, resolutions, and initiatives and referendums, Title 7, ch. 5, part 1.

7-12-1112. Resolution of intention to create or expand district — notice. (1) Before creating or expanding a district, the governing body shall pass a resolution of intention to do so, designating the boundaries thereof.

(2) Notice of passage of the resolution must be published for 5 days in a daily newspaper or in one issue of a weekly paper published in the municipality or county or, in case no newspaper is published in the municipality or county, then by posting for 5 days in three public places in the municipality or county. A copy of the notice shall be mailed to every owner of real property within the proposed district or within the proposed area of expansion listed on the last completed assessment roll for state, county, and school district taxes, at the owner's last-known address, on the same day the notice is first published or posted.

(3) The notice must describe the general purpose of the district or the general reason for the expansion and designate the time when and the place where the governing body will hear and pass upon all protests that may be made against the creation of the district or the expansion of the existing district. The notice shall refer to the resolution on file with the governing body or clerk, if any, for the description of the boundaries.

(4) The resolution to expand a district deals only with the question of the expanded area, and the existing district does not have to be reestablished.

History: **En. Sec. 5, Ch. 656, L. 1985; amd. Sec. 2, Ch. 79, L. 1991.**

Cross-References

Office of City Treasurer, 7-4-4701.

Local government ordinances, resolutions, and initiatives and referendums, Title 7, ch. 5, part 1.

Office of County Treasurer, Title 7, ch. 6, part 21.

7-12-1113. Protest against proposed district. (1) Any owner of property liable to be assessed may make written protest against the extent or creation of the district to be assessed, or both.

(2) The protest must be in writing and must be delivered to the governing body or its clerk, if any, not later than 5 p.m. of the last day within 15 days after the date of the first publication of the notice of the resolution of intention. The date and hour of receipt of the protest shall be endorsed thereon.

History: En. Sec. 6, Ch. 656, L. 1985.

7-12-1114. Hearing on protest — sufficient protest to bar proceedings. (1) At a regular meeting of the governing body after the expiration of the time within which protest may be made, the governing body shall proceed to hear and pass upon all protests. Its decision shall be final and conclusive.

(2) The governing body may adjourn the hearing from time to time. A protestant shall have the right to withdraw a protest at any time before final action thereon by the council or commission.

(3) No further action shall be taken upon the proposed district or proposed expansion of an existing district for 1 year if a written protest against passage of the proposed ordinance is filed by:

(a) owners of property within the proposed district or area of a proposed expansion having a taxable valuation, when aggregated, representing not less than 50% of the total taxable valuation of property within the district or within the area of a proposed expansion;

(b) not less than 50% of the owners of property within the district or area of a proposed expansion; or

(c) owners of property within the proposed district or area of a proposed expansion having projected assessments, when aggregated, representing not less than 50% of the total projected assessments for property within the district or within the area of a proposed expansion.

History: En. Sec. 7, Ch. 656, L. 1985; amd. Sec. 3, Ch. 79, L. 1991.

7-12-1115. Resolution creating or expanding district. When no protests have been delivered to the governing body within 15 days after the date of the first publication of the notice of the passing of the resolution of intention, when a protest shall have been found by the governing body to be insufficient or has been overruled, or when a protest against the extent of the proposed district or proposed expansion of a district has been heard and denied, the governing body has jurisdiction to order the creation or expansion of the district and shall pass a resolution creating or expanding the district in accordance with the resolution of intention.

History: En. Sec. 8, Ch. 656, L. 1985; amd. Sec. 4, Ch. 79, L. 1991.

7-12-1116 through 7-12-1120 reserved.

7-12-1121. Board of trustees — appointment — number — term of office. (1) When the governing body of a local government adopts an ordinance creating a business improvement district, the appointing authority, with the approval of the governing body, shall appoint not less than five or more than seven owners of property within the district to comprise the board of trustees of the district.

(2) The number of members of the board, once established, may be changed within these limits from time to time by subsequent resolutions of the

governing body of the local government. A resolution to reduce board membership may not require resignation of any member prior to completion of his appointed term.

(3) Three of the members who are first appointed must be designated to serve for terms of 1, 2, and 3 years, respectively, from the date of their appointments, and two must be designated to serve for terms of 4 years from the date of their appointments. For a seven-member commission, there must be two additional appointments for terms of 2 years and 3 years, respectively.

(4) After initial appointment, members must be appointed for a term of office of 4 years, except that a vacancy occurring during a term must be filled for the unexpired term. A member shall hold office until his successor has been appointed and qualified.

History: En. Secs. 9, 10, Ch. 656, L. 1985.

7-12-1122. Organization of board of trustees — no compensation. (1) The appointing authority shall designate which member of the board is to be the first chairman. When the office of chairman of the board becomes vacant thereafter, the board shall elect a chairman from among its members. The term of office as chairman of the board, unless otherwise prescribed by the governing body, must be for 1 calendar year or for that portion thereof remaining after each chairman is designated or elected.

(2) Members may receive no compensation.

History: En. Sec. 12, Ch. 656, L. 1985.

7-12-1123. Removal of board member. A member of a board of trustees may be removed by the appointing authority with the consent of the governing body.

History: En. Sec. 11, Ch. 656, L. 1985.

7-12-1124 through 7-12-1130 reserved.

7-12-1131. Powers of board in administering district. The board in administering a district has all powers necessary to carry out the functions of the district contained in the ordinance creating it, including the power to:

(1) sue and be sued, enter into contracts, and hire and terminate personnel needed for its purposes;

(2) provide special police, maintenance, or cleaning personnel for the protection and enjoyment of the general public using the business district;

(3) landscape and beautify public areas and to maintain those areas;

(4) contract with the governing body to maintain, operate, or repair public parking facilities;

(5) contract with the governing body to maintain streets, alleys, malls, bridges, ramps, tunnels, landscaping, and other public facilities as mutually agreed upon;

(6) promote private investment and business expansion in the district;

(7) provide for the management and administration of the affairs of the district;

(8) promote business activity by advertising, decorating, marketing, and promoting and managing events and other actions designed for the general promotion of business activities in the district; and

(9) perform such other functions as are necessary to carry out the purposes of this part and to further the objectives of the district.

History: **En. Sec. 13, Ch. 656, L. 1985.**

7-12-1132. Annual budget and work plan — approval — procedure — tax. (1) At a time determined by the governing body, the board shall submit to the governing body for approval a work plan and budget for the ensuing fiscal year.

(2) Following public notice that a work plan and budget have been submitted and that the governing body will levy an assessment to defray the cost of the work plan and budget, the governing body shall hold a public hearing on objections to the work plan and budget. After the hearing, the governing body may modify the work plan and budget as it considers necessary and appropriate.

(3) After approval of the work plan and budget and to defray the cost thereof for the next fiscal year, the governing body shall by resolution levy an assessment upon all of the property in the district using as a basis one of the methods prescribed in 7-12-1133.

(4) A copy of the resolution shall be delivered to the treasurer of the local government to be placed on the tax roll and collected in the same manner as other taxes.

History: **En. Sec. 14, Ch. 656, L. 1985.**

7-12-1133. Assessment of costs — area, lot, taxable valuation, and square footage options. (1) At the same time the board submits the annual budget and work plan to the governing body as provided in 7-12-1132, the board shall also recommend to the governing body a method of levying an assessment on the property within the district which will best ensure that the assessment on each lot or parcel is equitable in proportion to the benefits to be received.

(2) The governing body shall annually assess the entire cost of the district against the entire district using a method which best ensures that the assessment on each lot or parcel is equitable in proportion to the benefits to be received. In determining the method of assessment to be used, the governing body shall consider the recommendations of the board. The governing board shall levy the assessment using one of the following methods:

(a) each lot or parcel of land within such district may be assessed for that part of the whole cost which its area bears to the area of the entire district, exclusive of streets, avenues, alleys, and public places;

(b) if the governing body determines that the benefits derived by each lot or parcel are substantially equivalent, the cost may be assessed equally to each lot or parcel located within the district without regard to the area of the lot or parcel;

(c) each lot or parcel of land, including the improvements thereon, may be assessed for that part of the whole cost of the district which its taxable valuation bears to the total taxable valuation of the property of the district;

(d) each building may be assessed for that part of the whole cost of the district that the occupied or income-producing area of the building above the first floor bears to the area of the entire district; or

(e) by using any combination of the assessment options provided in subsections (2)(a) through (2)(d).

(3) If a district is expanded, the land within the expanded area must be assessed as provided for in subsection (2) for the duration of the district.

History: **En. Sec. 15, Ch. 656, L. 1985; amd. Sec. 1, Ch. 450, L. 1989; amd. Sec. 5, Ch. 79, L. 1991.**

7-12-1134 through 7-12-1140 reserved.

7-12-1141. Duration of district. The period of duration of a business improvement district is for the period specified in the resolution of the governing body creating the district but shall not be for a period longer than 10 years unless the duration of the district is extended in compliance with the provisions of this part for the creation of a district.

History: **En. Sec. 16, Ch. 656, L. 1985.**

7-12-1142. Governing body not to decrease public services. The governing body may not decrease the level of public services in the district existing prior to the creation of the district unless the services at the same time are decreased throughout the jurisdictional area of the governing body, nor may it transfer the financial burden of providing those services to the district. The governing body may not discriminate in the provision of publicly funded services between areas included in such district and areas not so included.

History: **En. Sec. 17, Ch. 656, L. 1985.**

7-12-1143. Liability insurance required. The governing body may not approve the annual budget or the work plan submitted to it by the board unless the annual budget and the work plan provide for liability insurance coverage insuring the district, the board, and the local government against legal liability for personal injury and property damage in an amount determined sufficient for that purpose by the governing body.

History: **En. Sec. 18, Ch. 656, L. 1985.**

Cross-References

Liability exposure and insurance coverage of governmental entities, Title 2, ch. 9.

7-12-1144. Obligations of district not obligations of local government. An obligation or debt of any nature of a district is not an obligation or debt of the local government that established the district, and in no event is a debt or obligation of a district payable out of any funds or properties of the local government. The debts and obligations of a district are payable solely from the funds and properties of the district.

History: **En. Sec. 19, Ch. 656, L. 1985.**

7-12-1145 through 7-12-1150 reserved.

7-12-1151. Water user entities exempt from special assessments. Rights-of-way, ditches, flumes, pipelines, dams, water rights, reservoirs, equipment, machinery, motor vehicles, and other personal property owned by a nonprofit water company, water users' association, irrigation company, canal company, ditch company, reservoir company, or similar nonprofit water user entity are exempt from every special assessment imposed by any improvement or maintenance district created under Title 7, chapter 12.

History: **En. Sec. 1, Ch. 276, L. 1987.**

Parts 12 through 20 reserved

Part 21
Rural Improvement Districts

7-12-2101. Definitions. (1) The term "board of county commissioners" includes any body or board which under the law is the legislative department of the government of the county.

(2) The word "blocks", shall mean such blocks, whether regular or irregular, as are bounded by main streets or partially by a boundary line of the city.

(3) The word "city" and the word "municipality", as used in this part, shall be understood and so construed as to include all corporations heretofore organized and now existing and hereafter organized for municipal purposes.

(4) The terms "clerk" and "county clerk", as used in this part, include any person or officer who shall be clerk of the board of county commissioners.

(5) The term "county treasurer", as used in this part, means and includes any person who, under whatever name or title, is the custodian of the funds of the county.

(6) The term "engineer", as used in this part, means the person, firm, or corporation who is designated by the board of county commissioners as the engineer for the improvement.

(7) The term "incidental expenses", as used in this part, includes:

(a) the compensation of the engineer for work done by him;

(b) the cost of printing and advertising, as provided in this part;

(c) interest on warrants of the county issued to pay costs of improvements as provided in this part;

(d) costs of issuance of the bonds or warrants of the special improvement district, including costs of printing the bonds, bond registration fees, attorneys' fees and financial consultants' fees, a premium for bond insurance, any price paid by the original purchaser of the bonds that is less than the face amount thereof, and interest to accrue on bonds or warrants of the special improvement district before assessments levied by the district are collected in amounts and at times sufficient to pay such interest; and

(e) a reasonable administrative fee payable to the county for the creation and administration of the district by the county, its officers, and its employees.

(8) The term "main street" means such actually opened street or streets as bound a block.

(9) The words "paved" or "repaved", as used in this part, shall be held to mean and include pavement of stone, whether paving blocks or macadam; of bituminous rock or asphalt; or of wood, brick, or other material, whether patented or not, which the board of county commissioners by rule or resolution shall adopt.

(10) The term "quarter block", as used in this part as to irregular blocks, includes all lots or portions of lots having any frontage on either intersecting street halfway from such intersection to the next main street or when no main street intervenes, all the way to the boundary line of any city.

(11) The word "street", as used in this part, includes avenues, highways, lanes, alleys, crossings or intersections, courts, and places which have been

dedicated and accepted according to the law or in common and undisputed use by the public for a period of not less than 5 years next preceding.

(12) The term "street intersection", wherever used in this part, means that parcel of land at the point of juncture or crossing of intersecting streets, which lies between lines drawn from corner to corner of all lot lines immediately cornering at such juncture.

(13) The words "work", "improved", and "improvements", as used in this part, shall include all work or the securing of property, by purchase or otherwise, mentioned in this part and also the construction, reconstruction, maintenance, and repair of all or any portion of said work.

History: En. Ch. 123, L. 1915; superseded by Ch. 156, L. 1917; amd. Ch. 67, L. 1919; superseded by Sec. 26, Ch. 147, L. 1921; re-en. Sec. 4599, R.C.M. 1921; re-en. Sec. 4599, R.C.M. 1935; amd. Sec. 4, Ch. 134, L. 1961; R.C.M. 1947, 16-1626(part); amd. Sec. 1, Ch. 665, L. 1985.

Cross-References

Special improvement district, 7-12-4101.

7-12-2102. Authorization to create rural improvement districts. (1) Whenever the public interest or convenience may require, the board of county commissioners is hereby authorized and empowered to order and create special improvement districts outside of the limits of incorporated towns and cities for the purpose of building, constructing, or acquiring by purchase one or more of the improvements of the kind described in 7-12-4102, in or for the benefit of the special improvement district.

(2) The board of county commissioners may order and create special improvement districts covering projects abutting the city limits and include properties inside the city where the rural improvement district abuts and benefits that property. Property owners within the proposed district boundaries inside the city may not be included in the rural special improvement district if 40% of those property owners protest the creation of the rural special improvement district. The property inside the city must be treated in a similar manner as to improvements, notices, and assessments as the property outside the city limits. A joint resolution of the city and county must be passed agreeing to the terms of the rural special improvement district prior to passing the resolution of intention or resolution creating the rural special improvement district. A copy of the resolution of intention and the resolution creating the rural special improvement district must be provided to the city clerk upon the passage of the respective resolutions.

History: En. Ch. 123, L. 1915; superseded by Ch. 156, L. 1917; amd. Ch. 67, L. 1919; superseded by Sec. 1, Ch. 147, L. 1921; re-en. Sec. 4574, R.C.M. 1921; amd. Sec. 1, Ch. 133, L. 1929; re-en. Sec. 4574, R.c.M. 1935; amd. Sec. 1, Ch. 30, L. 1961; amd. Sec. 1, Ch. 134, L. 1961; amd. Sec. 1, Ch. 304, L. 1969; R.C.M. 1947, 16-1601(part); amd. Sec. 1, Ch. 342, L. 1981; amd. Sec. 2, Ch. 665, L. 1985.

Cross-References

Board of County Commissioners defined, 7-12-2101.

City and municipality defined, 7-12-2101.

Clerk and County Clerk defined, 7-12-2101.

Work, improved, or improvements defined, 7-12-2101.

Special improvement district, 7-12-4102.

7-12-2103. Resolution of intention to create rural improvement district. (1) Before creating any special improvement district for the purpose of making any of the improvements or acquiring any private property for any purpose authorized by this part, the board of county commissioners shall pass a resolution of intention to do so.

(2) The resolution shall:

(a) designate the number of such district;

(b) describe the boundaries thereof;

(c) state therein the general character of the improvements which are to be made;

(d) designate the name of the engineer who is to have charge of the work and an approximate estimate of the cost thereof; and

(e) specify the method or methods by which the costs of the improvements will be assessed against property in the district.

(3) The board of county commissioners may include, in one proceeding under one resolution of intention and in one contract, any of the different kinds of improvements or work provided for in this part and may include any number of streets and rights-of-way or portions thereof, and it may exempt any of the work already done upon a street to the official grade.

History: En. Ch. 123, L. 1915; superseded by Ch. 156, L. 1917; amd. Ch. 67, L. 1919; superseded by Sec. 2, Ch. 147, L. 1921; re-en. Sec. 4575, R.C.M. 1921; re-en. Sec. 4575, R.C.M. 1935; amd. Sec. 2, Ch. 134, L. 1961; amd. Sec. 1, Ch. 252, L. 1969; R.C.M. 1947, 16-1602(part); amd. Sec. 3, Ch. 665, L. 1985; (3)En. Sec. 6, Ch. 665, L. 1985.

Cross-References

Board of County Commissioners defined, 7-12-2101.

Engineer defined, 7-12-2101.

Work, improved, or improvements defined, 7-12-2101.

Special improvement district, 7-12-4104.

7-12-2104. Sufficiency of description in resolution of intention. In all resolutions, notices, orders, and determinations subsequent to the resolution of intention and notice of improvements, it shall be sufficient to briefly describe the work or the assessment district or both and to refer to the resolution of intention for further particulars.

History: En. Ch. 123, L. 1915; superseded by Ch. 156, L. 1917; amd. Ch. 67, L. 1919; superseded by Sec. 6, Ch. 147, L. 1921; re-en. Sec. 4579, R.C.M. 1921; re-en. Sec. 4579, R.C.M. 1935; R.C.M. 1947, 16-1606.

Cross-References

Work, improved, or improvements defined, 7-12-2101.

Special improvement district, 7-12-4105.

7-12-2105. Notice of resolution of intention to create district — hearing. (1) Upon having passed the resolution of intention pursuant to 7-12-2103, the board of county commissioners shall publish notice of the passage of the resolution of intention as provided in 7-1-2121.

(2) A copy of the notice must be mailed, as provided in 7-1-2122, to each person, firm, or corporation or the agent of the person, firm, or corporation owning real property within the proposed district listed in the owner's name upon the last-completed assessment roll for state, county, and school district taxes.

(3) (a) The notice must describe the general character of the improvement or improvements proposed to be made or acquired by purchase, state the estimated cost of the improvements, describe generally the method or methods by which the costs of the improvements will be assessed, and designate the time when and the place where the board will hear and pass upon all protests that

may be made against the making or maintenance of the improvements or the creation of the district.

(b) If the revolving fund is to be pledged to secure the payment of bonds and warrants, the notice must include a statement that, subject to the limitations in 7-12-2182:

(i) the county general fund may be used to provide loans to the revolving fund; or

(ii) a general tax levy may be imposed on all taxable property in the county to meet the financial requirements of the revolving fund.

(c) The notice must refer to the resolution on file in the office of the county clerk for the description of the boundaries. If the proposal is for the purchase of an existing improvement, the notice must state the exact purchase price of the existing improvement.

History: En. Ch. 123, L. 1915; superseded by Ch. 156, L. 1917; amd. Ch. 67, L. 1919; superseded by Sec. 2, Ch. 147, L. 1921; re-en. Sec. 4575, R.C.M. 1921; re-en. Sec. 4575, R.C.M. 1935; amd. Sec. 2, Ch. 134, L. 1961; amd. Sec. 1, Ch. 252, L. 1969; R.C.M. 1947, 16-1602(part); amd. Sec. 16, Ch. 349, L. 1985; amd. Sec. 4, Ch. 665, L. 1985; amd. Sec. 1, Ch. 229, L. 1995.

Compiler's Comments

1995 Amendment: Chapter 229 in (2) deleted former first sentence that read: "The board shall also cause a copy of such notice to be posted in three public places within the boundaries of such special improvement district"; inserted (3)(b) concerning pledge of revolving fund and general fund loans or tax levy for revolving fund; and made minor changes in style. Amendment effective March 24, 1995.

Applicability: Section 16, Ch. 229, L. 1995, provided: "[This act] applies to all special improvement districts and rural special improvement districts created after [the effective date of this act] and, at the option of the city, town, or county, to bonds and warrants issued after [the effective date of this act], if the district was created before [the effective date of this act]." Effective March 24, 1995.

Cross-References

Board of County Commissioners defined, 7-12-2101.

Clerk and County Clerk defined, 7-12-2101.

Work, improved, or improvements defined, 7-12-2101.

Special improvement district, 7-12-4106.

7-12-2106. General provisions related to notice. (1) The notices, resolutions, orders, or other matters required to be published by the provisions of this part shall be published in a daily, semiweekly, or weekly newspaper, to be designated by the board of county commissioners, as often as the same is issued during the period specified for publication, and no other statute is applicable to publications herein provided for. In case there is no daily, semiweekly, or weekly newspaper printed or circulated in a county, then those notices, resolutions, orders, or other matters as are herein required to be published in a newspaper shall be posted, for the same length of time as required herein for publication in a daily, semiweekly, or weekly newspaper, in three of the most public places in each voting precinct except as otherwise specifically provided herein.

(2) Proof of the publication or posting of any notice is made by affidavit of the owner, publisher, printer, or clerk of the newspaper or of the poster of the notice.

(3) No publication of notice other than that provided for in this part is necessary to give validity to any of the proceedings provided therein.

(4) The word "twice", as used in this part, referring to the number of times notices, resolutions, orders, or other matters shall be published, means publi-

cation of the same in two entire issues of the newspaper, one being on one day and the other issue being on a subsequent day of the same or subsequent week.

History: En. Ch. 123, L. 1915; superseded by Ch. 156, L. 1917; amd. Ch. 67, L. 1919; superseded by Sec. 26, Ch. 147, L. 1921; re-en. Sec. 4599, R.C.M. 1921; re-en. Sec. 4599, R.C.M. 1935; amd. Sec. 4, Ch. 134, L. 1961; R.C.M. 1947, 16-1626(4); amd. Sec. 1, Ch. 251, L. 1979.

Cross-References

Board of County Commissioners defined, 7-12-2101.

Clerk and County Clerk defined, 7-12-2101.

Special improvement district, 7-12-4107.

7-12-2107. Responsibility for posting and publication of notice. (1) Whenever any resolution, order, notice, or determination is required to be published or posted and the duty of posting or procuring the publication or posting of the same is not specifically enjoined upon any officer in the county, it shall be the duty of the county clerk to post or procure the publication or posting thereof, as the case may be.

(2) No proceeding or step herein shall be invalidated or affected by any error or mistake or departure herefrom as to the officer or person posting or procuring the publication or posting of any resolution, notice, order, or determination hereunder when the same is actually published or posted for the time herein required.

History: En. Ch. 123, L. 1915; superseded by Ch. 156, L. 1917; amd. Ch. 67, L. 1919; superseded by Sec. 28, Ch. 147, L. 1921; re-en. Sec. 4601, R.C.M. 1921; re-en. Sec. 4601, R.C.M. 1935; R.C.M. 1947, 16-1628.

Cross-References

Clerk and County Clerk defined, 7-12-2101.

Special improvement district, 7-12-4108.

7-12-2108. Extension of proposed district. Whenever a contemplated work or improvement, in the opinion of the board of county commissioners, is of more than local or ordinary public benefit or whenever, according to the estimates furnished by the county surveyor or the engineer, the total estimated cost and expenses thereof would exceed one-half of the total assessed value of the lots and lands assessed (if assessed upon the lots and lands fronting upon such proposed work or improvement according to the valuation fixed by the last assessment roll whereon it was assessed for taxes), the board may make the expense of such work chargeable upon the lots and lands fronting upon such proposed improvement and upon other lots and lands not fronting on the improvement and which the board shall declare, in its resolution of intention, to be the property benefited by said work or improvement and to be assessed to pay the cost and expense thereof.

History: En. Ch. 123, L. 1915; superseded by Ch. 156, L. 1917; amd. Ch. 67, L. 1919; superseded by Sec. 3, Ch. 147, L. 1921; re-en. Sec. 4576, R.C.M. 1921; re-en. Sec. 4576, R.C.M. 1935; R.C.M. 1947, 16-1603; amd. Sec. 5, Ch. 665, L. 1985.

Cross-References

Board of County Commissioners defined, 7-12-2101.

Engineer defined, 7-12-2101.

Work, improved, or improvements defined, 7-12-2101.

Special improvement district, 7-12-4109.

7-12-2109. Right to protest creation or extension of district. At any time within 15 days after the date of the first publication of the notice of the passage of the resolution of intention, any owner of property liable to be assessed for said work may make written protest against the proposed work or against the extending or creation of the district to be assessed, or both. Such protest must be in writing, identify the property in the district owned by the protestor, and be signed by all owners of the property. The protest must be delivered to the county clerk, who shall endorse thereon the date of its receipt by him.

History: En. Ch. 123, L. 1915; superseded by Ch. 156, L. 1917; amd. Ch. 67, L. 1919; superseded by Sec. 4, Ch. 147, L. 1921; re-en. Sec. 4577, R.C.M. 1921; re-en. Sec. 4577, R.C.M. 1935; R.C.M. 1947, 16-1604(part); amd. Sec. 7, Ch. 665, L. 1985.

Cross-References

Clerk and County Clerk defined, 7-12-2101.

Work, improved, or improvements defined, 7-12-2101.

Special improvement district, 7-12-4110.

7-12-2110. Who considered owner. (1) The person owning the fee; the person to whom, on the day the action is commenced, appears the legal title to the lot and lands by deed duly recorded in the county recorder's office in each county; or the person in possession of lands, lots or portions of lots, or buildings under claim or exercising acts of ownership over the same for himself or as the executor, administrator, or guardian of the owner shall be regarded, treated, and deemed to be the "owner" for the purpose of this part, according to the intent and meaning of that word as used in this part.

(2) In case of property leased, the possession of the tenant or lessee holding and occupying under such persons shall be deemed the possession of such owner.

History: En. Ch. 123, L. 1915; superseded by Ch. 156, L. 1917; amd. Ch. 67, L. 1919; superseded by Sec. 26, Ch. 147, L. 1921; re-en. Sec. 4599, R.C.M. 1921; re-en. Sec. 4599, R.C.M. 1935; amd. Sec. 4, Ch. 134, L. 1961; R.C.M. 1947, 16-1626(1).

Cross-References

Special improvement district, 7-12-4111.

7-12-2111. Hearing on protest. (1) At the next regular meeting of the board of county commissioners after the expiration of the time within which protest may be made, the board shall proceed to hear and pass upon all protests so made, and its decision shall be final and conclusive. The board may adjourn said hearing from time to time.

(2) In determining whether or not sufficient protests have been filed in the proposed district to prevent further proceedings therein, property owned by the county shall be considered the same as other property in the district.

History: En. Ch. 123, L. 1915; superseded by Ch. 156, L. 1917; amd. Ch. 67, L. 1919; superseded by Sec. 4, Ch. 147, L. 1921; re-en. Sec. 4577, R.C.M. 1921; re-en. Sec. 4577, R.C.M. 1935; R.C.M. 1947, 16-1604(part).

Cross-References

Board of County Commissioners defined, 7-12-2101.

Special improvement district, 7-12-4112.

7-12-2112. Sufficient protest to bar proceedings — exception. (1) Except as provided in subsection (2), no further proceedings shall be taken for a period of 6 months from the date when said protest was received by the county clerk when the board of county commissioners finds that such protest is made by the owners of property in the district to be assessed for more than 50% of the cost of the proposed work, in accordance with the method or methods of assessment described in the resolution of intention.

(2) In case the improvements are the construction of sanitary sewers, the protests may be overruled by a unanimous vote of the board.

History: **En. Ch. 123, L. 1915; superseded by Ch. 156, L. 1917; amd. Ch. 67, L. 1919; superseded by Sec. 4, Ch. 147, L. 1921; re-en. Sec. 4577, R.C.M. 1921; re-en. Sec. 4577, R.C.M. 1935; R.C.M. 1947, 16-1604(part); amd. Sec. 8, Ch. 665, L. 1985.**

Cross-References

Board of County Commissioners defined, 7-12-2101.

Clerk and County Clerk defined, 7-12-2101.

Work, improved, or improvements defined, 7-12-2101.

Special improvement district, 7-12-4113.

7-12-2113. Resolution creating district — power to order improvements. (1) Before ordering any of the proposed improvements, the board of county commissioners shall pass a resolution creating the special improvement district in accordance with the resolution of intention theretofore introduced and passed by the board.

(2) The board shall be deemed to have acquired jurisdiction to order improvements immediately upon the occurrence of the following conditions:

(a) when no protests have been delivered to the county clerk within 15 days after the date of the first publication of the notice of the passing of the resolution of intention;

(b) when a protest shall have been found by said board to be insufficient or shall have been overruled; or

(c) when a protest against the extending of the proposed district shall have been heard and denied.

History: **En. Ch. 123, L. 1915; superseded by Ch. 156, L. 1917; amd. Ch. 67, L. 1919; superseded by Sec. 5, Ch. 147, L. 1921; re-en. Sec. 4578, R.C.M. 1921; re-en. Sec. 4578, R.C.M. 1935; R.C.M. 1947, 16-1605.**

Cross-References

Board of County Commissioners defined, 7-12-2101.

Clerk and County Clerk defined, 7-12-2101.

Work, improved, or improvements defined, 7-12-2101.

Special improvement district, 7-12-4114.

7-12-2114. Area includable within district. A rural improvement district, as authorized by 7-12-2102, may include a part or all of any county or may include areas in more than one county.

History: **En. Sec. 1, Ch. 62, L. 1963; R.C.M. 1947, 16-1605.1.**

7-12-2115. Adjournment of hearing. Whenever in proceedings hereunder a time and place for hearing by the board of county commissioners is fixed and from any cause, the hearing is not then and there held or regularly adjourned to a fixed time and place, the power and jurisdiction of the board in the premises shall not be thereby divested or lost, but the board may proceed anew to fix a time and place for the hearing and cause notice thereof to be given by publication by at least one insertion in a daily, semiweekly, or weekly newspaper, such publication to be at least 5 days before the date of the hearing. Thereupon the board shall have power to act as in the first instance.

History: **En. Ch. 123, L. 1915; superseded by Ch. 156, L. 1917; amd. Ch. 67, L. 1919; superseded by Sec. 27, Ch. 147, L. 1921; re-en. Sec. 4600, R.C.M. 1921; re-en. Sec. 4600, R.C.M. 1935; R.C.M. 1947, 16-1627.**

Cross-References

Board of County Commissioners defined, 7-12-2101.

Special improvement district, 7-12-4118.

7-12-2116. County surveyor as improvement district engineer. The county surveyor may be the engineer, as defined in 7-12-2101(6), for a rural improvement district.

History: En. Ch. 123, L. 1915; superseded by Ch. 156, L. 1917; amd. Ch. 67, L. 1919; superseded by Sec. 26, Ch. 147, L. 1921; re-en. Sec. 4599, R.C.M. 1921; re-en. Sec. 4599, R.C.M. 1935; amd. Sec. 4, Ch. 134, L. 1961; R.C.M. 1947, 16-1626(part).

Cross-References
Engineer defined, 7-12-2101.
Special improvement district, 7-12-4119.

7-12-2117. Record of expenses to be kept by engineer. It shall be the duty of the engineer selected as hereinbefore provided to keep an account in his office of all costs and expenses incurred in connection with every special improvement district and to certify the same to the county clerk.

History: En. Ch. 123, L. 1915; superseded by Ch. 156, L. 1917; amd. Ch. 67, L. 1919; superseded by Sec. 16, Ch. 147, L. 1921; re-en. Sec. 4589, R.C.M. 1921; re-en. Sec. 4589, R.C.M. 1935; R.C.M. 1947, 16-1616(part).

Cross-References
Clerk and County Clerk defined, 7-12-2101.
Engineer defined, 7-12-2101.
Special improvement district, 7-12-4121.

7-12-2118. Role of county clerk. It shall be the duty of the county clerk to prepare all necessary schedules and resolutions levying the taxes and assessments in such special improvement district.

History: En. Ch. 123, L. 1915; superseded by Ch. 156, L. 1917; amd. Ch. 67, L. 1919; superseded by Sec. 16, Ch. 147, L. 1921; re-en. Sec. 4589, R.C.M. 1921; re-en. Sec. 4589, R.C.M. 1935; R.C.M. 1947, 16-1616(part).

Cross-References
Clerk and County Clerk defined, 7-12-2101.
Special improvement district, 7-12-4122.

7-12-2119. Manner of making demands for incidental expenses. All demands for incidental expenses in 7-12-2101(7), except for the administrative fee of the county and interest payable on warrants or bonds of the district, shall be presented to the county clerk by itemized bill, duly verified by oath of the demandant.

History: En. Ch. 123, L. 1915; superseded by Ch. 156, L. 1917; amd. Ch. 67, L. 1919; superseded by Sec. 26, Ch. 147, L. 1921; re-en. Sec. 4599, R.C.M. 1921; re-en. Sec. 4599, R.C.M. 1935; amd. Sec. 4, Ch. 134, L. 1961; R.C.M. 1947, 16-1626(part); amd. Sec. 9, Ch. 665, L. 1985.

Cross-References
Clerk and County Clerk defined, 7-12-2101.
Incidental expenses defined, 7-12-2101.
Special improvement district, 7-12-4123.

7-12-2120. Maintenance of improvements. (1) Whenever any sanitary or storm sewers, lights or light systems, waterworks plants, water systems, sidewalks, or any other special improvements petitioned for or created by the state or federal government have been made, built, constructed, erected, or accomplished as provided in this part, it is hereby made the duty of the board of county commissioners under whose jurisdiction the district was created or supervised or directed to adequately and suitably maintain and preserve said improvements and to fully keep the same in proper repair and operation, by contract or otherwise, in such way or manner as the board shall deem suitable and proper.

(2) The whole cost of maintaining, preserving, and repairing of said improvements in any improvement district shall be paid by assessing the entire district in the method provided for by 7-12-2108.

History: En. Ch. 123, L. 1915; superseded by Ch. 156, L. 1917; amd. Ch. 67, L. 1919; superseded by Sec. 19, Ch. 147, L. 1921; re-en. Sec. 4592, R.C.M. 1921; amd. Sec. 3, Ch.

133, L. 1929; amd. Sec. 1, Ch. 104, L. 1935; re-en. Sec. 4592, R.C.M. 1935; R.C.M. 1947, 16-1619(1).

Cross-References

Board of County Commissioners defined, 7-12-2101.

Work, improved, or improvements defined, 7-12-2101.

Special improvement district, 7-12-4136.

7-12-2121. Administration of multicounty district. (1) If a rural improvement district includes areas in more than one county, the board of county commissioners of each county in which any portion of the district is situated shall, upon creation of the district and at a joint session, appoint an initial board of three trustees to administer the affairs of the district.

(2) At the end of the term of a trustee, the board of county commissioners of the county represented by the trustee shall appoint a new trustee. In case of a vacancy by death, resignation, removal from the district, or otherwise, a trustee shall be appointed by the board of county commissioners of the county represented by the trustee to fill the vacancy.

(3) At least one trustee shall be appointed from each county within the district.

History: En. Secs. 2, 3, Ch. 62, L. 1963; R.C.M. 1947, 16-1605.2, 16-1605.3(part); amd. Sec. 2, Ch. 251, L. 1979.

Cross-References

Board of County Commissioners defined, 7-12-2101.

7-12-2122. Term of office of multicounty district trustee. (1) The trustees appointed upon the creation of such district shall serve staggered terms of 1, 2, and 3 years. Thereafter, each trustee serves a term of 3 years.

(2) A trustee holds office for the term of his appointment or until his successor is appointed and qualified.

History: En. Sec. 3, Ch. 62, L. 1963; R.C.M. 1947, 16-1605.3(part); amd. Sec. 3, Ch. 251, L. 1979.

7-12-2123. Powers of multicounty district board of trustees. The board of trustees of a rural improvement district shall have all the powers and duties with respect to such district as the board of county commissioners has with respect to a district including the area of only one county.

History: En. Sec. 4, Ch. 62, L. 1963; R.C.M. 1947, 16-1605.4.

Cross-References

Board of County Commissioners defined, 7-12-2101.

7-12-2124 and 7-12-2125 reserved.

7-12-2126. Transfer of management and control of district to city or town. (1) When a special improvement district has been created in accordance with the provisions of this part in any county of the state and the property contained therein subsequently becomes a part of the boundaries of an incorporated city or town, the board of county commissioners or the multicounty district trustees, as the case may be, may transfer the operation, control, and management of the district to a city or town, upon such terms and conditions as may be agreed upon.

(2) A city or town may accept the responsibility to operate and control such a district.

(3) An agreement for transfer of responsibilities from a county to a city or town must be properly executed in writing and must be approved by both governing bodies. Until an agreement is effective, the board of county commissioners or the multicounty district trustees, as the case may be, shall retain operation, control, and management of the district. The date of transfer of operation, control, and management is the date the agreement is fully effective or the date of transfer specified in the agreement, whichever is later.

History: En. Sec. 1, Ch. 146, L. 1981.

Cross-References

City and municipality defined, 7-12-2101.

7-12-2127. Transfer of operation, control, and ownership of improvement district facilities to a utility. Whenever a special improvement district has been created in accordance with the provisions of this part for the purpose of providing the facilities through which a regulated utility is to provide utility services to the district, the commissioners may, upon such terms and conditions as may be agreed to, transfer the operation, control, and ownership of the facilities to the regulated utility for use by the utility to provide utility services.

History: En. Sec. 1, Ch. 325, L. 1983.

7-12-2128 through 7-12-2130 reserved.

7-12-2131. Bids for district work — exception. (1) Except as provided in subsection (3), the board of county commissioners may call for bids for proposals for several kinds or types of materials for any of the improvements proposed, reserving the right to select the kind or type of materials to be used in making any of the improvements after the bids or proposals have been opened, examined, and declared.

(2) All proposals or bids offered must be accompanied by bid security as provided for in Title 18, chapter 1, part 2. The proposals or bids must be delivered to the county clerk.

(3) If the proposed improvement is the conversion of overhead utilities to an underground location as provided for in 7-12-4102(2)(i), the work must be performed by the public utility responsible for the cost and feasibility report required under 69-4-313.

History: En. Ch. 123, L. 1915; superseded by Ch. 156, L. 1917; amd. Ch. 67, L. 1919; superseded by Sec. 7, Ch. 147, L. 1921; re-en. Sec. 4580, R.C.M. 1921; re-en. Sec. 4580, R.C.M. 1935; amd. Sec. 3, Ch. 134, L. 1961; amd. Sec. 3, Ch. 220, L. 1975; R.C.M. 1947, 16-1607(part); amd. Sec. 1, Ch. 250, L. 1993.

Cross-References

Board of County Commissioners defined, 7-12-2101.

Work, improved, or improvements defined, 7-12-2101.

Special improvement district, 7-12-4141.

7-12-2132. Advertising for bids. A notice inviting proposals and referring to specifications on file with the engineer selected as hereinbefore provided shall be published at least twice in a daily, semiweekly, or weekly newspaper published and circulated nearest to the boundaries of the proposed improvement district. The paper shall be designated by the board of county commissioners for that purpose. A copy of said notice shall be posted in at least three public places within the boundaries of the proposed district.

History: **En. Ch. 123, L. 1915; superseded by Ch. 156, L. 1917; amd. Ch. 67, L. 1919; superseded by Sec. 7, Ch. 147, L. 1921; re-en. Sec. 4580, R.C.M. 1921; re-en. Sec. 4580, R.C.M. 1935; amd. Sec. 3, Ch. 134, L. 1961; amd. Sec. 3, Ch. 220, L. 1975; R.C.M. 1947, 16-1607(1).**

Cross-References

Board of County Commissioners defined, 7-12-2101.

Engineer defined, 7-12-2101.

7-12-2133. Competitive bidding not required for purchase of existing improvement. If the proposed improvement consists of the purchase of an existing improvement, the board of county commissioners may in their discretion, after the creation of the special improvement district and after ordering the proposed improvement, enter into a contract for the purchase of said improvement, upon such terms as they deem just, without advertising for bids or proposals; provided, however, that the total purchase price shall not exceed the amount set forth in the notice required by 7-12-2105.

History: **En. Ch. 123, L. 1915; superseded by Ch. 156, L. 1917; amd. Ch. 67, L. 1919; superseded by Sec. 7, Ch. 147, L. 1921; re-en. Sec. 4580, R.C.M. 1921; re-en. Sec. 4580, R.C.M. 1935; amd. Sec. 3, Ch. 134, L. 1961; amd. Sec. 3, Ch. 220, L. 1975; R.C.M. 1947, 16-1607(6).**

Cross-References

Board of County Commissioners defined, 7-12-2101.

Work, improved, or improvements defined, 7-12-2101.

7-12-2134. Opening of bids. (1) The board of county commissioners shall, in open session, publicly open and examine and declare the bids.

(2) The time fixed for the opening of the bids shall not be less than 15 days from the time of the final publication of the notice required by 7-12-2132.

History: **En. Ch. 123, L. 1915; superseded by Ch. 156, L. 1917; amd. Ch. 67, L. 1919; superseded by Sec. 7, Ch. 147, L. 1921; re-en. Sec. 4580, R.C.M. 1921; re-en. Sec. 4580, R.C.M. 1935; amd. Sec. 3, Ch. 134, L. 1961; amd. Sec. 3, Ch. 220, L. 1975; R.C.M. 1947, 16-1607(part).**

Cross-References

Board of County Commissioners defined, 7-12-2101.

Special improvement district, 7-12-4142.

7-12-2135. Decision on award of contract. (1) The board of county commissioners may award the contract for such work or improvement to the lowest responsible bidder at the prices named in his bid and shall reject all proposals other than the lowest regular proposal or bid of any responsible bidder.

(2) The board:

(a) may reject any and all proposals or bids should it deem this for the public good;

(b) may also reject the bid of any party who has been delinquent or unfaithful in any former contract with the board.

History: **En. Ch. 123, L. 1915; superseded by Ch. 156, L. 1917; amd. Ch. 67, L. 1919; superseded by Sec. 7, Ch. 147, L. 1921; re-en. Sec. 4580, R.C.M. 1921; re-en. Sec. 4580, R.C.M. 1935; amd. Sec. 3, Ch. 134, L. 1961; amd. Sec. 3, Ch. 220, L. 1975; R.C.M. 1947, 16-1607(4).**

Cross-References

Board of County Commissioners defined, 7-12-2101.

Special improvement district, 7-12-4143.

7-12-2136. Procedure if all bids rejected or no bids received. If the bids are rejected or no bids are received, the board of county commissioners may within 6 months thereafter readvertise for proposals or bids for the performance of the work as in the first instance, without further proceedings, and thereafter proceed in the manner provided in 7-12-2131 through 7-12-2137.

History: En. Ch. 123, L. 1915; superseded by Ch. 156, L. 1917; amd. Ch. 67, L. 1919; superseded by Sec. 7, Ch. 147, L. 1921; re-en. Sec. 4580, R.C.M. 1921; re-en. Sec. 4580, R.C.M. 1935; amd. Sec. 3, Ch. 134, L. 1961; amd. Sec. 3, Ch. 220, L. 1975; R.C.M. 1947, 16-1607(part).

Cross-References

Board of County Commissioners defined, 7-12-2101.

Special improvement district, 7-12-4144.

7-12-2137. Procedure for dealing with bid securities. (1) If bids are rejected, the board of county commissioners shall thereupon return to the proper parties the bid securities accompanying the bids so rejected.

(2) The bid security accompanying said accepted proposal or bid shall be held by the county clerk until the contract for doing said work, as hereinafter provided, has been entered into, either by the lowest bidder or by the owners of over 50% of frontage, whereupon said bid security shall be returned to said bidder.

(3) If said bidder fails, neglects, or refuses to enter into the contract to perform said work and improvements as hereinafter provided, then the bid security accompanying his bid, in the amount therein mentioned, shall be declared to be forfeited to the board and shall be collected by it and paid into the general fund of the county.

History: En. Ch. 123, L. 1915; superseded by Ch. 156, L. 1917; amd. Ch. 67, L. 1919; superseded by Sec. 7, Ch. 147, L. 1921; re-en. Sec. 4580, R.C.M. 1921; re-en. Sec. 4580, R.C.M. 1935; amd. Sec. 3, Ch. 134, L. 1961; amd. Sec. 3, Ch. 220, L. 1975; R.C.M. 1947, 16-1607(part).

Cross-References

Board of County Commissioners defined, 7-12-2101.

Clerk and County Clerk defined, 7-12-2101.

Special improvement district, 7-12-4145.

7-12-2138. Contractor's bond for successful completion of work. All contractors and contracting owners included shall, at the time of executing any contract for any work, execute a bond to the satisfaction and approval of the board of county commissioners, in the form and manner provided for in Title 18, chapter 2, part 2.

History: En. Ch. 123, L. 1915; superseded by Ch. 156, L. 1917; amd. Ch. 67, L. 1919; superseded by Sec. 9, Ch. 147, L. 1921; re-en. Sec. 4582, R.C.M. 1921; re-en. Sec. 4582, R.C.M. 1935; amd. Sec. 4, Ch. 220, L. 1975; R.C.M. 1947, 16-1609.

Cross-References

Board of County Commissioners defined, 7-12-2101.

Work, improved, or improvements defined, 7-12-2101.

Special improvement district, 7-12-4151.

7-12-2139. Procedure if person entering contract defaults on work. (1) If the contractor who may have taken any contract does not complete the same within the time limited in the contract or within such further time as may be given him, the engineer selected as hereinbefore provided shall report such delinquency to the board of county commissioners.

(2) (a) The board may relet the unfinished portion of said work after pursuing the formalities prescribed in 7-12-2131 through 7-12-2137 for the letting of the whole in the first instance.

(b) The board shall have the right, in its option, to complete the contract and deduct any cost in excess of the contract price thereof from any money, bond, or warrant due such contractor. In the event there is no money, bond, or warrant due such contractor from which to deduct such cost, then the board shall have the right to sue such contractor and recover from him such costs.

History: En. Ch. 123, L. 1915; superseded by Ch. 156, L. 1917; amd. Ch. 67, L. 1919; superseded by Sec. 8, Ch. 147, L. 1921; re-en. Sec. 4581, R.C.M. 1921; re-en. Sec. 4581, R.C.M. 1935; R.C.M. 1947, 16-1608.

Cross-References

Board of County Commissioners defined, 7-12-2101.

Engineer defined, 7-12-2101.

Special improvement district, 7-12-4152.

7-12-2140. Procedure for objection to proceedings. (1) At any time within 60 days from the date of the awarding of a contract, any owner or other person having any interest in any lot, tract, or plot of land liable to assessment who claims that any of the previous acts or proceedings relating to said improvements are irregular, defective, erroneous, or faulty or that his property will be damaged by the making of any of the improvements in the manner contemplated may file with the county clerk a written notice specifying in what respect said acts or proceedings are irregular, defective, erroneous, or faulty or in what manner and to what extent his property will be damaged by the making of said improvements.

(2) Said notice shall state that it is made in pursuance of this section.

(3) All objections in any act or proceeding or in relation to the making of said improvements must be made in writing and in the manner and at the time aforesaid. All claims for damages therefor shall be waived by such property owner in case no written objection is filed by him, provided that notice of the passage of the resolution of intention has been actually published and the notice of improvements posted as provided in this part.

History: En. Ch. 123, L. 1915; superseded by Ch. 156, L. 1917; amd. Ch. 67, L. 1919; superseded by Sec. 10, Ch. 147, L. 1921; re-en. Sec. 4583, R.C.M. 1921; re-en. Sec. 4583, R.C.M. 1935; R.C.M. 1947, 16-1610.

Cross-References

Clerk and County Clerk defined, 7-12-2101.

7-12-2141 through 7-12-2150 reserved.

7-12-2151. Assessment of costs. (1) To defray the cost of making or acquiring any of the improvements provided for in this part, including incidental expenses, the board of county commissioners shall assess the entire cost of the improvements against benefited lots, tracts, or parcels of land in the district, based upon the benefits received, and shall adopt one or any combination of the following methods of assessment for each improvement made or acquired for the benefit of the district:

(a) Each lot, tract, or parcel of land assessed in the district may be assessed with that part of the whole cost which its assessable area bears to the assessable area of all the benefited lots, tracts, or parcels in the district, exclusive of streets, avenues, alleys, and public places. For the purposes of this subsection (1)(a), "assessable area" means an area of a lot, tract, or parcel of land representing the benefit conferred upon the lot, tract, or parcel by the improvement. Assessable area may be less than but may not exceed the actual area of the lot, tract, or parcel.

(b) Each lot, tract, or parcel of land assessed in the district may be assessed with that part of the whole cost of the improvement based upon the assessed value of the benefited lots or pieces of land within the district, if the board determines the assessment to be equitable in proportion to and not exceeding the benefits received from the improvement by the lot, tract, or parcel.

(c) Each lot, tract, or parcel of land in the district abutting upon the street where the improvement has been made may be assessed in proportion to its lineal feet abutting the street.

(d) Each lot, tract, or parcel of land in the district may be assessed an equal amount based upon the total cost of the improvement.

(e) Each lot, tract, or parcel of land in the district served by a utility connection may be assessed an equitable lump sum for the connection based on the bid price in the applicable contract.

(2) The board may use one or any combination of methods of assessment in a single special improvement district and, if more than one improvement is undertaken, need not assess each lot, tract, or parcel in the district for the cost of all the improvements.

(3) The board in its discretion may pay the whole or any part of the cost of any street, avenue, or alley intersection out of any funds in its hands available for that purpose or to include the whole or any part of the costs within the amount of the assessment to be paid by the benefited property in the district.

History: En. Ch. 123, L. 1915; superseded by Ch. 156, L. 1917; amd. Ch. 67, L. 1919; superseded by Sec. 11, Ch. 147, L. 1921; re-en. Sec. 4584, R.C.M. 1921; amd. Sec. 2, Ch. 133, L. 1929; amd. Sec. 1, Ch. 131, L. 1935; re-en. Sec. 4584, R.C.M. 1935; amd. Sec. 1, Ch. 53, L. 1939; amd. Sec. 1, Ch. 136, L. 1941; R.C.M. 1947, 16-1611(part); amd. Sec. 10, Ch. 665, L. 1985; amd. Sec. 1, Ch. 269, L. 1993.

Cross-References

Board of County Commissioners defined, 7-12-2101.

City and municipality defined, 7-12-2101.

Street defined, 7-12-2101.

Work, improved, or improvements defined, 7-12-2101.

Special improvement district, 7-12-4162 through 7-12-4165.

7-12-2152. Exception for owners of water ditches under certain circumstances. The owner or owners of open ditches carrying irrigation or other water shall not be included in any rural improvement district under this part for the purpose of assessment to support the rural improvement district for the installation, repair, or maintenance of any protective devices intended to protect the safety of the public from open ditches carrying irrigation or other water. Such devices or improvements shall provide access to and shall not be constructed so as to hinder the operation and maintenance of the ditch.

History: En. Ch. 123, L. 1915; superseded by Ch. 156, L. 1917; amd. Ch. 67, L. 1919; superseded by Sec. 1, Ch. 147, L. 1921; re-en. Sec. 4574, R.C.M. 1921; amd. Sec. 1, Ch. 133, L. 1929; re-en. Sec. 4574, R.C.M. 1935; amd. Sec. 1, Ch. 30, L. 1961; amd. Sec. 1, Ch. 134, L. 1961; amd. Sec. 1, Ch. 304, L. 1969; R.C.M. 1947, 16-1601(part); amd. Sec. 11, Ch. 665, L. 1985.

7-12-2153. Incidental expenses considered as cost of improvements — costs for bonds or warrants secured by revolving fund — district reserve account. (1) Incidental expenses connected with the formation of a special improvement district, including the cost of preparation of plans, specifications, maps, or plats; engineering, superintendence, and inspection; preparation of assessment rolls; and the other incidental expenses described in 7-12-2101(7) are considered a part of the cost of making the improvements within the special improvement district.

(2) If the bonds or warrants are secured by the revolving fund pursuant to 7-12-2185, the original costs of any improvement must include an amount equal to 5% of the principal amount of any bonds or warrants to be issued, which must be deposited in the revolving fund created in 7-12-2181.

(3) (a) Subject to the provisions of subsections (3)(b) through (3)(e), the board of county commissioners may create a district reserve account.

(b) As part of the original costs of the improvements, the board of county commissioners may include an amount, in addition to the amount, if any, specified in subsection (2), not to exceed 5% of the principal amount of any rural special improvement district bonds or warrants issued. The amount must be deposited in a district reserve account created and maintained in the district fund.

(c) If there are insufficient funds in the district bond and interest accounts to pay when due the principal of and the interest on bonds or warrants, the district reserve account, if established, must be used to pay the principal of and the interest on the bonds or warrants issued against the district fund.

(d) If bonds or warrants are secured by the revolving fund, the district reserve account, if established, must be exhausted before a loan may be made from the revolving fund pursuant to 7-12-2183.

(e) Money remaining in the district reserve account after the principal and interest on all bonds and warrants drawn on the district have been paid or discharged must be transferred to the revolving fund.

(4) The establishment of a district reserve account does not preclude the board of county commissioners from requiring additional security from the owners of real property in the district.

History: En. Ch. 123, L. 1915; superseded by Ch. 156, L. 1917; amd. Ch. 67, L. 1919; superseded by Sec. 16, Ch. 147, L. 1921; re-en. Sec. 4589, R.C.M. 1921; re-en. Sec. 4589, R.C.M. 1935; R.C.M. 1947, 16-1616(part); amd. Sec. 1, Ch. 476, L. 1983; amd. Sec. 12, Ch. 665, L. 1985; amd. Sec. 2, Ch. 229, L. 1995.

Compiler's Comments

1995 Amendment: Chapter 229 in (1), at beginning, substituted "Incidental expenses" for "The cost and expense" and near end, after "cost", deleted "and expenses"; in (2), at beginning, inserted clause concerning revolving fund pursuant to 7-12-2185, after "improvement" substituted "must" for "may, at the option of the board of county commissioners", and substituted "amount equal to 5%" for "amount not to exceed 5%"; inserted (3) concerning district reserve account; inserted (4) concerning additional security from real property owners; and made minor changes in style. Amendment effective March 24, 1995.

Applicability: Section 16, Ch. 229, L. 1995, provided: "[This act] applies to all special improvement districts and rural special improvement districts created after [the effective date of this act] and, at the option of the city, town, or county, to bonds and warrants issued after [the effective date of this act], if the district was created before [the effective date of this act]." Effective March 24, 1995.

Cross-References

Incidental expenses defined, 7-12-2101.
Special improvement district, 7-12-4169.

7-12-2154. Payment of damages incurred as a result of improvements. Whenever the owner or anyone interested in any property situated in the special improvement district, after filing with the county clerk a written notice claiming that his property has been damaged, is awarded or recovers any amount because of damages sustained by the property because of the construction of any improvement in the special improvement district:

(1) before the resolution levying the assessment to defray the cost of making the improvement in the district is passed and adopted by the board of county commissioners, the amount ordered to be recovered shall be added to and constitute a part of making the improvements; but

(2) if the resolution levying the assessment to defray the cost and expenses of making the improvement has been passed and adopted by the board, it shall pass and adopt a supplemental resolution levying an additional assessment against the property in the district for the purpose of paying the amount awarded and the supplemental resolution shall be made in the same manner and prepared and certified the same as the original resolution levying the assessment to defray the cost of making the improvements.

History: En. Ch. 123, L. 1915; superseded by Ch. 156, L. 1917; amd. Ch. 67, L. 1919; superseded by Sec. 15, Ch. 147, L. 1921; re-en. Sec. 4588, R.C.M. 1921; re-en. Sec. 4588, R.C.M. 1935; R.C.M. 1947, 16-1615; amd. Sec. 4, Ch. 251, L. 1979.

Cross-References

Board of County Commissioners defined, 7-12-2101.

Clerk and County Clerk defined, 7-12-2101.

Work, improved, or improvements defined, 7-12-2101.

Special improvement district, 7-12-4170.

7-12-2155. Apportionment of costs between corner lots and inside lots. In order to apportion the cost of any of the improvements provided for in this part between the corner lots and inside lots of any block, the board of county commissioners may, in the resolution creating any improvement district, provide that whenever any of the improvements provided for in this part shall be along any side street or abutting upon the side of any corner lot or block, the amount of the assessment against the property in said district to defray the cost of such improvements shall be so assessed that each square foot of the land embraced within any such corner lot shall bear double the amount of the cost of such improvement that a square foot of any inside lot shall bear.

History: En. Ch. 123, L. 1915; superseded by Ch. 156, L. 1917; amd. Ch. 67, L. 1919; superseded by Sec. 11, Ch. 147, L. 1921; re-en. Sec. 4584, R.C.M. 1921; amd. Sec. 2, Ch. 133, L. 1929; amd. Sec. 1, Ch. 131, L. 1935; re-en. Sec. 4584, R.C.M. 1935; amd. Sec. 1, Ch. 53, L. 1939; amd. Sec. 1, Ch. 136, L. 1941; R.C.M. 1947, 16-1611(part).

Cross-References

Block defined, 7-12-2101.

Board of County Commissioners defined, 7-12-2101.

Street defined, 7-12-2101.

Work, improved, or improvements defined, 7-12-2101.

Special improvement district, 7-12-4171.

7-12-2156. Responsibility for costs for improvements close to street railway. Whenever any portion of the surface of a street is kept or used by any person, firm, or corporation for railroad or for street railway purposes, the cost and expense of making such improvements between the rails and for 1 foot on each side thereof shall be paid by the person, firm, or corporation owning such railroad; and where double tracks of railroads are laid, such person, firm, or corporation shall pay the costs of making such improvement or improvements between such tracks and between all switches and spurs.

History: En. Ch. 123, L. 1915; superseded by Ch. 156, L. 1917; amd. Ch. 67, L. 1919; superseded by Sec. 11, Ch. 147, L. 1921; re-en. Sec. 4584, R.C.M. 1921; amd. Sec. 2, Ch.

133, L. 1929; amd. Sec. 1, Ch. 131, L. 1935; re-en. Sec. 4584, R.C.M. 1935; amd. Sec. 1, Ch. 53, L. 1939; amd. Sec. 1, Ch. 136, L. 1941; R.C.M. 1947, 16-1611(2).

Cross-References

Street defined, 7-12-2101.

Work, improved, or improvements defined, 7-12-2101.

7-12-2157. Status of federal property within improvement district. Whenever any lot, piece, or parcel of land belonging to the United States or mandatory of the government shall front upon the proposed work or improvement or is to be included within the district declared by the board of county commissioners in its resolution of intention to be a district to be assessed to pay the cost and expenses thereof, the board shall in the resolution of intention declare that said lots, pieces, or parcels of land shall be omitted from the assessment thereto to be made to cover the cost and expenses of said work or improvement. The cost of said work or improvement in front of said lots, pieces, or parcels of land shall be paid by the county from its general fund.

History: En. Ch. 123, L. 1915; superseded by Ch. 156, L. 1917; amd. Ch. 67, L. 1919; superseded by Sec. 12, Ch. 147, L. 1921; re-en. Sec. 4585, R.C.M. 1921; re-en. Sec. 4585, R.C.M. 1935; R.C.M. 1947, 16-1612.

Cross-References

Board of County Commissioners defined, 7-12-2101.

Special improvement district, 7-12-4173.

7-12-2158. Resolution for levy and assessment of tax. (1) To defray the cost of making or acquiring improvements in any special improvement district, the board of county commissioners shall by resolution levy and assess a tax upon all benefited property in the district created for such purpose, by using for a basis for such assessment the method or methods provided for by this part and described in the resolution of intention.

(2) Such resolution shall contain a description of each lot or parcel of land, with the name of the owner if known, and the amount of each partial payment, when made, and the day when the same shall become delinquent.

(3) Such resolution, signed by the chairman of the board, shall be kept on file in the office of the county clerk.

History: (1), (2)En. Ch. 123, L. 1915; superseded by Ch. 156, L. 1917; amd. Ch. 67, L. 1919; superseded by Sec. 13, Ch. 147, L. 1921; re-en. Sec. 4586, R.C.M. 1921; re-en. Sec. 4586, R.C.M. 1935; amd. Sec. 1, Ch. 140, L. 1947; amd. Sec. 1, Ch. 40, L. 1965; Sec. 16-1613, R.C.M. 1947; (3)En. Ch. 123, L. 1915; superseded by Ch. 156, L. 1917; amd. Ch. 67, L. 1919; superseded by Sec. 14, Ch. 147, L. 1921; re-en. Sec. 4587, R.C.M. 1921; re-en. Sec. 4587, R.C.M. 1935; Sec. 16-1614, R.C.M. 1947; R.C.M. 1947, 16-1613(part), 16-1614(part); amd. Sec. 13, Ch. 665, L. 1985.

Cross-References

Board of County Commissioners defined, 7-12-2101.

Clerk and County Clerk defined, 7-12-2101.

Work, improved, or improvements defined, 7-12-2101.

Special improvement district, 7-12-4176.

7-12-2159. Notice of resolution for levy and assessment of tax — protest and hearing. (1) A notice, signed by the county clerk and stating that the resolution levying a special assessment to defray the cost of making the improvements is on file in the office of the county clerk and is subject to inspection, shall be:

(a) published as provided in 7-1-2121;

(b) mailed to the owner of each lot, tract, or parcel of land to be assessed (such lands must be identified and the mailing address determined from the last completed assessment roll for state, county, and school district taxes); and

(c) mailed to such other persons known to the clerk to have an ownership interest in the property.

(2) The notice shall state the time at and place in which objections to the final adoption of the resolution will be heard by the board of county commissioners. The time for the hearing may not be less than 5 days after the second publication or less than 10 days after the mailing of the notice.

History: En. Ch. 123, L. 1915; superseded by Ch. 156, L. 1917; amd. Ch. 67, L. 1919; superseded by Sec. 14, Ch. 147, L. 1921; re-en. Sec. 4587, R.C.M. 1921; re-en. Sec. 4587, R.C.M. 1935; R.C.M. 1947, 16-1614(part); amd. Sec. 5, Ch. 251, L. 1979; amd. Sec. 17, Ch. 349, L. 1985; amd. Sec. 14, Ch. 665, L. 1985.

Cross-References

Board of County Commissioners defined, 7-12-2101.

Clerk and County Clerk defined, 7-12-2101.

Work, improved, or improvements defined, 7-12-2101.

Special improvement district, 7-12-4177.

7-12-2160. Hearing on protest. (1) At the time so fixed, the board of county commissioners shall meet and hear all such objections and for that purpose may adjourn from day to day.

(2) The board may by resolution modify such assessment in whole or in part. A copy of such resolution, certified by the county clerk, must be delivered to the county treasurer 2 days after its passage.

History: En. Ch. 123, L. 1915; superseded by Ch. 156, L. 1917; amd. Ch. 67, L. 1919; superseded by Sec. 14, Ch. 147, L. 1921; re-en. Sec. 4587, R.C.M. 1921; re-en. Sec. 4587, R.C.M. 1935; R.C.M. 1947, 16-1614(part).

Cross-References

Clerk and County Clerk defined, 7-12-2101.

County Treasurer defined, 7-12-2101.

7-12-2161. Payment of maintenance costs — resolution for assessment and for change of boundaries. (1) It shall be the duty of the board to estimate, as near as practicable, the cost of maintaining, preserving, or repairing the improvements in each district for each year beginning January 1 or such other time as it may appear necessary.

(2) Before the first Monday in September of each year, the board shall pass and finally adopt a resolution levying and assessing all the property within the district with an amount equal to the whole cost of maintaining, preserving, or repairing said improvements within the district. The assessment shall be proportioned as provided in 7-12-2108.

(3) Said resolution levying assessments to defray the cost of maintenance, preservation, or repair of such improvements shall be prepared and certified to in the manner as near as may be to a resolution levying assessments for making, constructing, and installing the improvements in said special improvement district.

(4) The board shall have the power of changing by resolution, not more than once a year, the boundaries of any maintenance district.

History: En. Ch. 123, L. 1915; superseded by Ch. 156, L. 1917; amd. Ch. 67, L. 1919; superseded by Sec. 19, Ch. 147, L. 1921; re-en. Sec. 4592, R.C.M. 1921; amd. Sec. 3, Ch. 133, L. 1929; amd. Sec. 1, Ch. 104, L. 1935; re-en. Sec. 4592, R.C.M. 1935; R.C.M. 1947, 16-1619(part).

Cross-References

Work, improved, or improvements defined, 7-12-2101.

Special improvement district, 7-12-4179.

7-12-2162. Improvement district maintenance fund. The money collected from the assessment provided for in 7-12-2161 shall be paid into a fund known as the special improvement district No. .... maintenance fund, the number of which shall correspond with the number of the special improvement district in which the improvements so maintained are situated. Such fund shall be used to defray the expense of maintenance, preservation, or repair of said improvements and for no other purpose.

History: En. Ch. 123, L. 1915; superseded by Ch. 156, L. 1917; amd. Ch. 67, L. 1919; superseded by Sec. 19, Ch. 147, L. 1921; re-en. Sec. 4592, R.C.M. 1921; amd. Sec. 3, Ch. 133, L. 1929; amd. Sec. 1, Ch. 104, L. 1935; re-en. Sec. 4592, R.C.M. 1935; R.C.M. 1947, 16-1619(part).

Cross-References

Special improvement district, 7-12-4180.

7-12-2163. Collection of district assessments by county treasurer — delinquencies. (1) Where any resolution of assessment, either for construction or maintenance, has been duly certified by the county clerk, it shall be the duty of the county treasurer, in accordance with the provisions of this title, to collect such assessment in the same manner and at the same time as taxes for general and municipal purposes are collected by him.

(2) When the payment of an installment of a special assessment becomes delinquent, all payments of subsequent installments of the special assessment may, at the option of the board of county commissioners and upon adoption of the appropriate resolutions, become delinquent. Upon delinquency in one or all installments, the whole property must be sold the same as other property is sold for taxes. The enforcement of the lien of any installment of a special assessment by any method authorized by law does not prevent the enforcement of the lien of any subsequent installment when it becomes delinquent.

History: En. Ch. 123, L. 1915; superseded by Ch. 156, L. 1917; amd. Ch. 67, L. 1919; superseded by Sec. 22, Ch. 147, L. 1921; re-en. Sec. 4595, R.C.M. 1921; re-en. Sec. 4595, R.C.M. 1935; R.C.M. 1947, 16-1622; amd. Sec. 2, Ch. 617, L. 1987.

Cross-References

Clerk and County Clerk defined, 7-12-2101.

County Treasurer defined, 7-12-2101.

Special improvement district, 7-12-4181.

7-12-2164. Payment of tax under protest — action to recover. (1) When any tax levied and assessed under any of the provisions of this part is deemed unlawful by the party whose property is thus taxed or from whom such tax is demanded, such person may pay such tax or any part thereof deemed unlawful under protest to the county treasurer.

(2) Thereupon, such party so paying or his legal representative may bring an action in any court of competent jurisdiction against the officer to whom such tax was paid or against the county in whose behalf the same was collected to recover such tax or any portion thereof so paid under protest. Any action instituted to recover such tax paid under protest must be commenced within 60 days after the date of payment thereof.

(3) The tax so paid under protest shall be held by the county treasurer until the determination of any action brought for the recovery thereof.

History: **En. Ch. 123, L. 1915; superseded by Ch. 156, L. 1917; amd. Ch. 67, L. 1919; superseded by Sec. 24, Ch. 147, L. 1921; re-en. Sec. 4597, R.C.M. 1921; re-en. Sec. 4597, R.C.M. 1935; R.C.M. 1947, 16-1624.**

Cross-References

County Treasurer defined, 7-12-2101.

Special improvement district, 7-12-4185.

Taxation — protest payment, Title 15, ch. 1, part 4.

7-12-2165. Procedure to correct assessment and relevy and collect tax. (1) Whenever, by reason of any alleged nonconformity to law or by reason of any omission or irregularity, any special tax or assessment is either invalid or its validity is questioned, the board of county commissioners may make all necessary orders and may take all necessary steps to correct, reassess, and relevy the same, including the ordering of work, with the same force and effect as if made at the time provided by the law or resolution relating thereto. The board may reassess and relevy the tax or assessment with the same force and effect as an original levy.

(2) Any special tax, upon reassessment or relevy, shall, so far as practicable, be levied and collected the same as it would have been if the first levy had been enforced. Any provision of any law specifying a time when or order in which acts shall be done in a proceeding which may result in a special tax are subject to the qualifications of this part.

(3) Whenever any apportionment or assessment is made and any property is assessed too little or too much, the assessment may be corrected and reassessed for such additional amount as is proper or the assessment may be reduced even to the extent of refunding the tax collected.

History: **En. Ch. 123, L. 1915; superseded by Ch. 156, L. 1917; amd. Ch. 67, L. 1919; superseded by Sec. 23, Ch. 147, L. 1921; re-en. Sec. 4596, R.C.M. 1921; re-en. Sec. 4596, R.C.M. 1935; R.C.M. 1947, 16-1623(part); amd. Sec. 6, Ch. 251, L. 1979.**

Cross-References

Board of County Commissioners defined, 7-12-2101.

Special improvement district, 7-12-4186.

7-12-2166. Certain errors not to invalidate assessments or liens. (1) When, under any of the provisions of this part, special taxes and assessments are assessed against any lot or parcel of land as the property of a particular person, no misnomer of the owner or supposed owner or other mistake relating to the ownership thereof shall affect such assessment or render it void or voidable.

(2) Any mistake in the description of property or the name of the owner shall not vitiate any liens created by this part unless it is impossible to identify the property from the description.

History: **(1)En. Ch. 123, L. 1915; superseded by Ch. 156, L. 1917; amd. Ch. 67, L. 1919; superseded by Sec. 18, Ch. 147, L. 1921; re-en. Sec. 4591, R.C.M. 1921; re-en. Sec. 4591, R.C.M. 1935; Sec. 16-1618, R.C.M. 1947; (2)En. Ch. 123, L. 1915; superseded by Ch. 156, L. 1917; amd. Ch. 67, L. 1919; superseded by Sec. 25, Ch. 147, L. 1921; re-en. Sec. 4598, R.C.M. 1921; re-en. Sec. 4598, R.C.M. 1935; Sec. 16-1625, R.C.M. 1947; R.C.M. 1947, 16-1618, 16-1625.**

Cross-References

Special improvement district, 7-12-4187.

7-12-2167. Term of payment of assessments. (1) Except as provided in subsection (2), the payment of the assessment to defray the cost of constructing any improvements in special improvement districts may be spread over a term of not to exceed 30 years.

(2) If federal loans are available, payments may be spread over a term of not to exceed 40 years.

(3) The assessments are payable in equal semiannual installments of principal, with interest on the unpaid installments, or if the board of county commissioners so prescribes in the resolution authorizing issuance of the special improvement district bonds, in equal semiannual installments of principal and interest, each in the amount required to pay the principal over the term of payment, with interest at the rate then borne by the assessment.

(4) Any assessment that is not delinquent may be prepaid, in whole but not in part, at any time after the assessment is levied, by the payment of the assessment, with interest accrued and to accrue thereon through the next date on which interest on bonds of the special improvement district is payable.

History: En. Ch. 123, L. 1915; superseded by Ch. 156, L. 1917; amd. Ch. 67, L. 1919; superseded by Sec. 13, Ch. 147, L. 1921; re-en. Sec. 4586, R.C.M. 1921; re-en. Sec. 4586, R.C.M. 1935; amd. Sec. 1, Ch. 140, L. 1947; amd. Sec. 1, Ch. 40, L. 1965; R.C.M. 1947, 16-1613(part); amd. Sec. 15, Ch. 665, L. 1985; amd. Sec. 1, Ch. 631, L. 1987.

Cross-References

Work, improved, or improvements defined, 7-12-2101.

Special improvement district, 7-12-4190.

7-12-2168. Assessments and certain other charges as liens. (1) Any special assessment made and levied to defray the cost and expenses of any of the work enumerated in this part, together with any percentages imposed for delinquency and for cost of collection, shall constitute a lien upon and against the property upon which such assessment is made and levied from and after the date of the passage of the resolution levying such assessment. This lien can only be extinguished by payment of such assessment, with all penalties, costs, and interest.

(2) Any special assessment levied and made for any of the purposes mentioned in 7-12-2120 and 7-12-2161, together with all costs and penalties, shall constitute a lien upon and against the property upon which said assessment is made and levied from and after the date of the final passage and adoption of the resolution levying the same, which lien can only be extinguished by payment of such assessment, with all penalties, costs, and interest.

History: (1)En. Ch. 123, L. 1915; superseded by Ch. 156, L. 1917; amd. Ch. 67, L. 1919; superseded by Sec. 17, Ch. 147, L. 1921; re-en. Sec. 4590, R.C.M. 1921; re-en. Sec. 4590, R.C.M. 1935; Sec. 16-1617, R.C.M. 1947; (2)En. Ch. 123, L. 1915; superseded by Ch. 156, L. 1917; amd. Ch. 67, L. 1919; superseded by Sec. 19, Ch. 147, L. 1921; re-en. Sec. 4592, R.C.M. 1921; amd. Sec. 3, Ch. 133, L. 1929; amd. Sec. 1, Ch. 104, L. 1935; re-en. Sec. 4592, R.C.M. 1935; R.C.M. 1947, 16-1619; R.C.M. 1947, 16-1617, 16-1619(part).

Cross-References

Work, improved, or improvements defined, 7-12-2101.

Special improvement district, 7-12-4191.

7-12-2169. Use of bonds and warrants. All costs and expenses incurred in any improvement district in the acquisition, construction, or maintenance of any improvement specified in this part or incurred in the issuance of bonds or warrants of the district, including incidental expenses, shall be paid for by special improvement district bonds or warrants. The board of county commissioners shall provide for making payments for maintenance or improvements in any rural improvement district by the method provided in 7-12-2172 and 7-12-2173.

History: **En. Ch. 123, L. 1915; superseded by Ch. 156, L. 1917; amd. Ch. 67, L. 1919; superseded by Sec. 20, Ch. 147, L. 1921; re-en. Sec. 4593, R.C.M. 1921; re-en. Sec. 4593, R.C.M. 1935; amd. Sec. 1, Ch. 3, L. 1955; amd. Sec. 7, Ch. 260, L. 1959; amd. Sec. 2, Ch. 136, L. 1961; amd. Sec. 2, Ch. 40, L. 1965; amd. Sec. 22, Ch. 234, L. 1971; R.C.M. 1947, 16-1620(part); amd. Sec. 18, Ch. 665, L. 1985.**

Cross-References

Board of County Commissioners defined, 7-12-2101.

Work, improved, or improvements defined, 7-12-2101.

Special improvement district, 7-12-4201.

7-12-2170. Repealed. Sec. 16, Ch. 449, L. 1989.

History: **En. Ch. 123, L. 1915; superseded by Ch. 156, L. 1917; amd. Ch. 67, L. 1919; superseded by Sec. 20, Ch. 147, L. 1921; re-en. Sec. 4593, R.C.M. 1921; re-en. Sec. 4593, R.C.M. 1935; amd. Sec. 1, Ch. 3, L. 1955; amd. Sec. 7, Ch. 260, L. 1959; amd. Sec. 2, Ch. 136, L. 1961; amd. Sec. 2, Ch. 40, L. 1965; amd. Sec. 22, Ch. 234, L. 1971; R.C.M. 1947, 16-1620(part); amd. Sec. 1, Ch. 308, L. 1981.**

7-12-2171. Details relating to rural improvement district bonds and warrants — definitions of bond forms. (1) The bonds and warrants shall be drawn against either the construction or maintenance fund created for the special improvement district and shall bear interest from the date of registration until called for redemption or paid in full. The interest shall be payable annually or semiannually, at the discretion of the board of county commissioners, on the dates the board prescribes. The warrants or bonds shall bear the signatures of the chairman of the board and the county clerk and shall bear the corporate seal of the county. They shall be registered in the office of the county clerk and the county treasurer, and if interest coupons are attached to the warrants or bonds, they shall also be registered and shall bear the signatures of the chairman of the board and the county clerk. The coupons may bear the facsimile signatures of the officers in the discretion of the board.

(2) The bonds shall be in denominations of $100 or fractions or multiples thereof, may be issued in installments, and may extend over a period not to exceed 30 years; except that if federal loans are available for improvements, repayment may extend over a period not to exceed 40 years. For the purposes of this subsection, the term of a bond issue commences on July 1 of the fiscal year in which the county first levies to pay principal and interest on the bonds.

(3) All special improvement district bonds must be amortization bonds unless, in the judgment of the board, serial bonds will be more advantageous to the district and can be sold at a comparatively reasonable rate or rates of interest.

(4) As used in this part, unless the context clearly indicates otherwise, the following definitions apply:

(a) "Amortization bonds" means the form of bonds on which:

(i) a part of the principal must be paid each time interest becomes payable;

(ii) the part payment of principal increases at each installment in the same amount that the interest decreases;

(iii) the combined interest and principal due on each due date remains the same until the bonds are paid;

(iv) the final payment may vary from prior payments in the amount resulting from disregarding fractional costs in prior payments; and

(v) the initial payment may be larger than subsequent payments if the increase represents interest accrued over an additional period not greater than 6 months.

(b) "Serial bonds" means a bond issue payable in annual installments commencing not more than 2 years from the date of issue, any one installment consisting of one or more bonds, with the principal amount of bonds maturing in each installment not exceeding five times the principal amount of the bonds maturing in the immediately preceding installment.

History: En. Ch. 123, L. 1915; superseded by Ch. 156, L. 1917; amd. Ch. 67, L. 1919; superseded by Sec. 20, Ch. 147, L. 1921; re-en. Sec. 4593, R.C.M. 1921; re-en. Sec. 4593, R.C.M. 1935; amd. Sec. 1, Ch. 3, L. 1955; amd. Sec. 7, Ch. 260, L. 1959; amd. Sec. 2, Ch. 136, L. 1961; amd. Sec. 2, Ch. 40, L. 1965; amd. Sec. 22, Ch. 234, L. 1971; R.C.M. 1947, 16-1620(2); amd. Sec. 19, Ch. 665, L. 1985; (4)En. Sec. 20, Ch. 665, L. 1985; amd. Sec. 5, Ch. 256, L. 1989; amd. Sec. 1, Ch. 449, L. 1989.

Cross-References

Board of County Commissioners defined, 7-12-2101.

Clerk and County Clerk defined, 7-12-2101.

County Treasurer defined, 7-12-2101.

Special improvement district, 7-12-4203.

7-12-2172. Procedure to issue bonds and warrants. (1) The board of county commissioners shall sell bonds or warrants issued under the provisions of 7-12-2169 and 7-12-2171 through 7-12-2174, in an amount sufficient to pay that part of the total cost and expense of the improvements which is to be assessed against the benefited property within the district, to the highest and best bidder for cash, at a price, including interest to date of delivery, not less than that prescribed by the board in the resolution calling for the sale of the bonds or warrants. The board may fix the minimum price for the bonds or warrants in an amount less than the face value of the bonds or warrants if it determines that the sale is in the best interests of the district and the county.

(2) The bonds or warrants may be sold at a private negotiated sale to the United States or the state of Montana, or an agency, instrumentality, corporation, or department thereof.

(3) In all other cases, the provisions of 7-7-4251, 7-7-4252, and 7-7-4254 which relate to the notice of sale, publication of notice, and manner and method of selling bonds by cities and towns, insofar as they are applicable and not in conflict with the provisions of this section and 7-12-2173, shall apply to, govern, and control the form of notice of sale, publication of notice, and manner and method of selling bonds or warrants.

History: En. Ch. 123, L. 1915; superseded by Ch. 156, L. 1917; amd. Ch. 67, L. 1919; superseded by Sec. 20, Ch. 147, L. 1921; re-en. Sec. 4593, R.C.M. 1921; re-en. Sec. 4593, R.C.M. 1935; amd. Sec. 1, Ch. 3, L. 1955; amd. Sec. 7, Ch. 260, L. 1959; amd. Sec. 2, Ch. 136, L. 1961; amd. Sec. 2, Ch. 40, L. 1965; amd. Sec. 22, Ch. 234, L. 1971; R.C.M. 1947, 16-1620(part); amd. Sec. 21, Ch. 665, L. 1985; amd. Sec. 2, Ch. 449, L. 1989; amd. Sec. 3, Ch. 6, L. 1993.

Cross-References

Board of County Commissioners defined, 7-12-2101.

Work, improved, or improvements defined, 7-12-2101.

Special improvement district, 7-12-4204.

7-12-2173. Disposition of bond or warrant proceeds. (1) The board of county commissioners shall use the proceeds of such sale in making payment for the cost of the improvements. Payments to contractors may be made either from time to time, on estimates made by the engineer in charge of such improvements for the county, or upon the entire completion of the improvements and the acceptance thereof by the board.

(2) All interest earned on the investment of bond or warrant proceeds during the construction of improvements must be credited to the construction account of the improvement district fund from which the proceeds were withdrawn.

(3) Any proceeds of the bonds or warrants, including investment income thereon, remaining after payment of all costs of the improvements must be transferred to the sinking fund in the improvement district fund and applied, to the extent possible, to the prepayment and redemption of bonds or warrants on the next succeeding redemption date for which notice of redemption may properly be given.

History: En. Ch. 123, L. 1915; superseded by Ch. 156, L. 1917; amd. Ch. 67, L. 1919; superseded by Sec. 20, Ch. 147, L. 1921; re-en. Sec. 4593, R.C.M. 1921; re-en. Sec. 4593, R.C.M. 1935; amd. Sec. 1, Ch. 3, L. 1955; amd. Sec. 7, Ch. 260, L. 1959; amd. Sec. 2, Ch. 136, L. 1961; amd. Sec. 2, Ch. 40, L. 1965; amd. Sec. 22, Ch. 234, L. 1971; R.C.M. 1947, 16-1620(part); amd. Sec. 2, Ch. 382, L. 1983; amd. Sec. 23, Ch. 665, L. 1985.

Cross-References

Board of County Commissioners defined, 7-12-2101.

Engineer defined, 7-12-2101.

Special improvement district, 7-12-4205.

7-12-2174. Redemption of bonds and warrants. (1) The county treasurer shall first pay out of the proper special improvement district fund, on each interest payment date, the interest on all outstanding warrants or bonds on presentation of the coupons belonging to the warrants or bonds or otherwise then payable and the principal, if any, then payable on the warrants or bonds. Any funds remaining in the fund must be applied to the redemption of the warrants or bonds in the order specified in the resolution authorizing the issuance of the bonds.

(2) Special improvement district warrants or bonds must be redeemed on any interest payment date from the proceeds of the bonds or warrants remaining after payment of all costs of the improvements, as provided in 7-12-2173, or from the prepayment of assessments levied in the district. Special improvement district bonds or warrants may otherwise be subject to redemption and prepayment as provided in the resolution on any interest payment date.

(3) The date of redemption must be fixed by the county treasurer and may not be less than 30 days after the date of publication or of mailing of the notice. The county treasurer shall give written notice to the holders of the warrants or bonds to be redeemed, if their addresses are known, of the number of warrants or bonds to be redeemed and the date on which payment will be made. If the addresses of the holders of all bonds or warrants to be redeemed are not known, the county treasurer shall publish notice of redemption once in a newspaper of general circulation in the county. On the date fixed for redemption, interest must cease.

History: En. Ch. 123, L. 1915; superseded by Ch. 156, L. 1917; amd. Ch. 67, L. 1919; superseded by Sec. 20, Ch. 147, L. 1921; re-en. Sec. 4593, R.C.M. 1921; re-en. Sec. 4593, R.C.M. 1935; amd. Sec. 1, Ch. 3, L. 1955; amd. Sec. 7, Ch. 260, L. 1959; amd. Sec. 2, Ch. 136, L. 1961; amd. Sec. 2, Ch. 40, L. 1965; amd. Sec. 22, Ch. 234, L. 1971; R.C.M. 1947, 16-1620(3); amd. Sec. 24, Ch. 665, L. 1985; amd. Sec. 37, Ch. 423, L. 1995.

Compiler's Comments

1995 Amendment: Chapter 423 at end of (1) substituted "order specified in the resolution authorizing the issuance of the bonds" for "order of their registration as provided in subsection (2)"; near end of (2) substituted "as provided in the resolution" for "at the option of the county"; in (3), in first sentence, extended redemption date from 10 days after notice to 30 days after notice and near end of third sentence substituted "newspaper of general circulation" for "newspaper published"; and made minor changes in style. Amendment effective April 13, 1995.

Applicability: Section 53, Ch. 423, L. 1995, provided: "[This act] applies to bonds issued under the provisions of [this act] after [the effective date of this act]." Effective April 13, 1995.

Cross-References

City and municipality defined, 7-12-2101.
County Treasurer defined, 7-12-2101.
Special improvement district, 7-12-4206.

7-12-2175. Investment of maintenance, interest, and sinking fund money. (1) The governing body of a county in which a special improvement district or maintenance district is located may invest maintenance, interest, and sinking fund money of the district in time deposits of a bank, savings and loan association, or credit union insured by the federal deposit insurance corporation or by the national credit union administration or invested in direct obligations of the United States government.

(2) Interest collected on the deposits or investments must be credited to the fund from which the money was withdrawn.

History: En. Sec. 1, Ch. 45, L. 1965; R.C.M. 1947, 11-2288(part); amd. Sec. 1, Ch. 382, L. 1983; amd. Sec. 8, Ch. 421, L. 1985; amd. Sec. 13, Ch. 10, L. 1993; amd. Sec. 1, Ch. 101, L. 1993.

Cross-References

Special improvement district, 7-12-4207.

7-12-2176. Interest rate on unpaid assessments. (1) The installments of assessments remaining unpaid bear simple interest at an annual rate equal to the sum of:

(a) 1/2 of 1% a year; plus

(b) the average interest rate payable on the outstanding bonds or warrants of the rural special improvement district; plus

(c) at the option of the board of county commissioners, up to an additional 1/2 of 1% a year.

(2) The board of county commissioners may subsequently reduce or eliminate the additional interest rate allowed under subsection (1)(c). If the additional interest rate is reduced or eliminated, it may not be subsequently increased or reimposed.

History: En. Sec. 16, Ch. 665, L. 1985; amd. Sec. 3, Ch. 229, L. 1995.

Compiler's Comments

1995 Amendment: Chapter 229 in (1)(b), before "special improvement district", inserted "rural"; inserted (1)(c) concerning optional 1/2 of 1%; inserted (2) authorizing reduction or elimination of optional additional interest rate; and made minor changes in style. Amendment effective March 24, 1995.

Applicability: Section 16, Ch. 229, L. 1995, provided: "[This act] applies to all special improvement districts and rural special improvement districts created after [the effective date of this act] and, at the option of the city, town, or county, to bonds and warrants issued after [the effective date of this act], if the district was created before [the effective date of this act]." Effective March 24, 1995.

7-12-2177 through 7-12-2180 reserved.

7-12-2181. Creation of rural improvement district revolving fund. The board of county commissioners of any county in the state which may create any rural special improvement district or districts for any purpose may (in order to secure prompt payment of any special improvement district bonds or warrants issued in payment of improvements made therein and the interest thereon as it becomes due) create, establish, and maintain by resolution a fund to be known and designated as the rural special improvement district revolving fund. Nothing herein shall authorize or permit the elimination of a revolving fund until all bonds and warrants secured thereby and the interest thereon have been fully paid and discharged.

History: En. Sec. 1, Ch. 188, L. 1957; R.C.M. 1947, 16-1633; amd. Sec. 1, Ch. 422, L. 1983.

Cross-References

Board of County Commissioners defined, 7-12-2101.

Special improvement district, 7-12-4221.

7-12-2182. Sources of money for revolving fund. (1) For the purpose of providing funds for the revolving fund, the board of county commissioners:

(a) shall, if the bonds or warrants are secured by the revolving fund pursuant to 7-12-2185, include in the cost of the improvements to be defrayed from the proceeds of the bonds or warrants an amount equal to 5% of the principal amount of the bonds or warrants to be issued as provided in 7-12-2153(2);

(b) may, from time to time, transfer to the revolving fund from the general fund of the county an amount as may be necessary. The amount transferred is a loan from the general fund to the revolving fund.

(c) shall, in addition to a transfer or transfers from the general fund or in lieu of a transfer, levy for the revolving fund a tax, declared to be for a public purpose, on all taxable property in the county as is necessary to meet the financial requirements of the revolving fund. A tax may not be levied if the balance in the revolving fund exceeds 5% of the principal amount of the then-outstanding rural special improvement district bonds and warrants secured by the revolving fund. If a tax is levied, the tax may not be an amount that would increase the balance in the revolving fund above 5% of the then-outstanding rural special improvement district bonds and warrants secured by the revolving fund.

(2) Whenever there is money in the district fund that is not required for payment of any bond or warrant of the district secured by the revolving fund or of interest on the bond or warrant, as much of the money as may be necessary to pay the loan provided for in 7-12-2183 must, by order of the board, be transferred to the revolving fund and the balance of the money or, if there is no outstanding loan, as much of the money as the board considers necessary may be transferred to the improvement district's maintenance fund. After all the bonds and warrants secured by the revolving fund issued on any rural special improvement district have been fully paid, all money remaining in the district fund must, by order of the board, be transferred to and become part of the revolving fund or the improvement district's maintenance fund.

History: En. Secs. 2, 4, Ch. 188, L. 1957; R.C.M. 1947, 16-1634, 16-1636(part); amd. Sec. 2, Ch. 308, L. 1981; amd. Sec. 2, Ch. 422, L. 1983; amd. Sec. 1, Ch. 621, L. 1985; amd. Sec. 4, Ch. 229, L. 1995.

Compiler's Comments

1995 Amendment: Chapter 229 inserted (1)(a) concerning revolving fund; and made minor changes in style. Amendment effective March 24, 1995.

Applicability: Section 16, Ch. 229, L. 1995, provided: "[This act] applies to all special improvement districts and rural special improvement districts created after [the effective date of this act] and, at the option of the city, town, or county, to bonds and warrants issued after [the effective date of this act], if the district was created before [the effective date of this act]." Effective March 24, 1995.

Cross-References

Board of County Commissioners defined, 7-12-2101.

Special improvement district, 7-12-4222.

7-12-2183. Loan from revolving fund to meet payments on bonds and warrants or to make emergency repairs. (1) During the period described in 7-12-2185(2), when any rural special improvement district bond or warrant secured by the revolving fund or any interest on the bond or warrant becomes due and payable and there is either no money or insufficient money in the appropriate district fund after a transfer from the appropriate district reserve account, if established, with which to pay the bond, warrant, or interest, an amount sufficient to make up the deficiency must be loaned by the revolving fund to the district fund. The bond, warrant, or interest must be paid from the money loaned and money available in the district fund.

(2) If there is insufficient money in the rural special improvement district maintenance fund to pay the cost of emergency repairs, the board of county commissioners, by order or resolution, may loan money from the revolving fund to the district maintenance fund. The loan must be repaid in annual installments in not more than 3 years. The loans may not cause a default in the payments of the principal of the bonds or warrants or the interest on the bonds or warrants. The loan must be repaid by an assessment as provided by 7-12-2120 if other funds are not available. If there are insufficient funds in the revolving fund to make the loans without causing a default in the payment of the principal of the bonds or warrants or the interest on the bonds or warrants secured by the revolving fund, then the loans may not be made.

History: En. Sec. 3, Ch. 188, L. 1957; R.C.M. 1947, 16-1635(1); amd. Sec. 1, Ch. 339, L. 1981; amd. Sec. 3, Ch. 422, L. 1983; amd. Sec. 5, Ch. 229, L. 1995.

Compiler's Comments

1995 Amendment: Chapter 229 at beginning of first sentence of (1) inserted "During the period described in 7-12-2185(2)", near middle, after "fund", inserted "after a transfer from the appropriate district reserve account if established", and after "deficiency" substituted "must" for "may, by order of the board of county commissioners" and in second sentence, after "loaned", substituted "and money available in the district fund" for "or from the money so loaned when added to such insufficient amount, as the case may require"; in (2), in third sentence, substituted "cause a default in" for "interfere with", after "payments of" inserted "the principal of the", and after "warrants" inserted "or the interest on the bonds or warrants" and in fifth sentence, after "without", substituted "causing a default" for "interfering with", after "payment of" inserted "the principal of the", and after "warrants" inserted "or the interest on the bonds or warrants"; and made minor changes in style. Amendment effective March 24, 1995.

Applicability: Section 16, Ch. 229, L. 1995, provided: "[This act] applies to all special improvement districts and rural special improvement districts created after [the effective date of this act] and, at the option of the city, town, or county, to bonds and warrants issued after [the effective date of this act], if the district was created before [the effective date of this act]." Effective March 24, 1995.

Cross-References

Board of County Commissioners defined, 7-12-2101.

Special improvement district, 7-12-4223.

7-12-2184. Lien arising due to loan from revolving fund. (1) Whenever any loan is made to any rural special improvement district fund from the revolving fund, the revolving fund shall have a lien therefor on the land within the district which is delinquent in the payment of its assessments and on all unpaid assessments and installments of assessments on such district (whether delinquent or not) and on all money thereafter coming into such district fund, to the amount of such loan, together with interest thereon from the time it was made at the rate or percentage borne by the bond or warrant for payment of which, or of interest thereon, such loan was made.

(2) If, after all the bonds and warrants issued on any rural special improvement district have been fully paid and all moneys remaining in such district fund have been transferred to the revolving fund, there still remains a debt from the district to the revolving fund, the board of county commissioners may foreclose the lien upon property within the district owing unpaid assessments to the district for the purpose of paying off said loan to the revolving fund.

History: En. Sec. 4, Ch. 188, L. 1957; R.C.M. 1947, 16-1636(part).

Cross-References

Board of County Commissioners defined, 7-12-2101.

Special improvement district, 7-12-4224.

Liens, Title 71, ch. 3, part 1.

7-12-2185. Covenants to use revolving fund — duration of revolving fund obligation — factors to be considered. (1) In connection with the issuance of rural special improvement district bonds or warrants, the board of county commissioners may undertake and agree:

(a) to make loans or advances from the revolving fund to the district fund involved in amounts sufficient to make good any deficiency in the bond and interest accounts, to the extent that funds are available; and

(b) to provide funds for the revolving fund pursuant to the provisions of 7-12-2182 by annually making a tax levy (or, in lieu of the tax levy, a loan from the general fund), subject to the maximum limitations imposed by 7-12-2182.

(2) (a) The undertakings and agreements are binding upon the county with respect to the rural special improvement district bonds or warrants until the earlier of:

(i) the date on which all bonds or warrants of the issue and interest on the bonds or warrants have been fully paid or discharged in a bankruptcy case in which the special improvement district is the debtor; or

(ii) the date that is the later of:

(A) the final stated maturity date of the bonds or warrants; or

(B) the date on which all special assessments levied in the district have been either paid or discharged.

(b) The discharge of delinquent special assessments levied with respect to a particular lot or parcel is considered to occur upon:

(i) the issuance of a tax deed, as provided in 15-18-214, or, if the county is the recipient of the tax deed, upon the sale, lease, or other disposition of the property by the county as provided in Title 7, chapter 8, part 22, 23, 24, or 25, or other applicable law; or

(ii) payment in full of the allowed secured claim for the special assessments in a bankruptcy case in which the owner of the lot or parcel is the debtor.

(3) Prior to entering into the undertakings and agreements set forth in subsection (1), the board of county commissioners shall take into consideration the following factors, including other circumstances that the board may determine to be material to the public interest of securing the bonds or warrants by the revolving fund:

(a) the estimated market value of the lots, parcels, or tracts included in the district at the time that the district is created in comparison to the estimated market value of the lots, parcels, or tracts after the improvements are made;

(b) the diversity of ownership of property in the district;

(c) the amount of the special assessments proposed to be levied against each lot, parcel, or tract in the district in comparison to the estimated market value of the lot, parcel, or tract after the improvements are made;

(d) the amount of any outstanding special assessments against the property in the district;

(e) the amount of delinquencies in the payment of outstanding special assessments or property taxes levied against property in the district;

(f) the public benefit of the improvements proposed to be financed; and

(g) in the case of a district created to make improvements in a newly platted subdivision:

(i) the prior subdivision development experience and credit rating or credit history of the person developing the land; and

(ii) any contribution by property owners to the costs of the improvements or any security given by property owners to secure payment of special assessments levied in the district.

(4) Any findings or determinations with respect to the factors contained in subsection (3) made by the board of county commissioners in a resolution authorizing the undertakings and agreements or the issuance of bonds or warrants are conclusive evidence that the board has taken into consideration the factors required by subsection (3).

(5) In lieu of the undertakings and agreements set forth in subsection (1), the board of county commissioners may determine in the resolution authorizing the issuance of the bonds or warrants that the revolving fund does not secure the bonds or warrants and that the bonds or warrants are payable solely from the district fund created for the bonds or warrants and do not have a claim against the revolving fund.

History: En. Sec. 3, Ch. 188, L. 1957; R.C.M. 1947, 16-1635(2); amd. Sec. 4, Ch. 422, L. 1983; amd. Secs. 6, 15, Ch. 229, L. 1995.

Compiler's Comments

1995 Amendment: Chapter 229 in (1)(a) substituted "make" for "issue orders annually authorizing"; in (1)(b), after parenthetical, deleted "as the board may so agree to and undertake"; at end of (2)(a) substituted "until the earlier of" for "so offered or any interest thereon remain unpaid"; inserted (2)(a)(i) and (2)(a)(ii) concerning payment or maturity dates; inserted (2)(b) concerning delinquent assessments; inserted (3) enumerating factors to be considered by County Commissioners; inserted (4) concerning conclusive evidence of consideration; and made minor changes in style. Amendment effective March 24, 1995.

Coordination Instruction: Section 15, Ch. 229, L. 1995, provided: "If Senate Bill No. 8 is approved, then in [section (6)(2)(a)(i) of the first reading copy of this act], amending 7-12-2185, the following language must be inserted following the word "paid": "or discharged in a bankruptcy case in which the special improvement district is the debtor"." Senate Bill No. 8 was approved as Ch. 296, L. 1995.

Applicability: Section 16, Ch. 229, L. 1995, provided: "[This act] applies to all special improvement districts and rural special improvement districts created after [the effective date of this act] and, at the option of the city, town, or county, to bonds and warrants issued after [the effective date of this act], if the district was created before [the effective date of this act]." Effective March 24, 1995.

Cross-References

Board of County Commissioners defined, 7-12-2101.

Special improvement district, 7-12-4225.

7-12-2186. Utilization of excess money in revolving fund. Whenever there is in the revolving fund an amount in excess of 5% of the then-outstanding rural special improvement district bonds and warrants secured thereby and the board considers any part of the excess to be greater than the amount necessary for payment or redemption of maturing bonds or warrants secured thereby or interest thereon, the board may order the amount the board considers greater than the amount necessary or any part thereof transferred to the general fund of the county.

History: En. Sec. 5, Ch. 188, L. 1957; R.C.M. 1947, 16-1637; amd. Sec. 3, Ch. 308, L. 1981; amd. Sec. 5, Ch. 422, L. 1983.

Cross-References

Special improvement district, 7-12-4227.

7-12-2187 through 7-12-2190 reserved.

7-12-2191. Change in outstanding principal of district — relevy of assessments. If proceeds of the bonds or warrants of the special improvement district, including investment income, are applied to the redemption and prepayment of the bonds or warrants, as provided in 7-12-2173 and 7-12-2174, or if refunding bonds are issued pursuant to 7-12-2193 and the principal amount of the outstanding bonds of the district is decreased or increased, the assessments levied in the district and then outstanding must be reduced or increased, respectively, pro rata by the principal amount of the prepayment or the increment above or below the outstanding principal amount of bonds represented by the refunding bonds. If refunding bonds are issued, the assessments may be relevied over a term ending not later than either the final maturity date of the refunding bonds or the date 30 years after the date the bonds to be refunded were issued. The board shall reassess and relevy the assessments, with the same effect as an original levy, in reduced or increased amounts, in accordance with the provisions of 7-12-2158 through 7-12-2160.

History: En. Sec. 17, Ch. 665, L. 1985; amd. Sec. 3, Ch. 449, L. 1989.

7-12-2192. Pooling of bonds of districts in county. (1) If the board of county commissioners determines by resolution that the pooling of bonds of more than one special improvement district of the county is in the best interest of the county and the respective districts and will facilitate the sale of the bonds under more advantageous terms or with lower interest rates, the county may issue bonds of the districts combined in a single offering. Such bonds must be secured by the rural special improvement district revolving fund of the county.

(2) The title of the bonds issued pursuant to this section shall denote that bonds of different special improvement districts have been pooled and shall refer to the numbers of the districts. The bonds must be drawn against a sinking fund that has separate accounts for each special improvement district combined for financing purposes, into which must be payable the assessments levied in each of the districts.

History: En. Sec. 22, Ch. 665, L. 1985.

7-12-2193. Refunding bonds. (1) A county may issue special improvement district bonds for the purpose of providing the money needed to pay principal of and interest on outstanding special improvement district bonds. To issue bonds for that purpose, the board of county commissioners, at a regular meeting or a duly called special meeting, shall adopt a resolution setting forth:

(a) the facts regarding the outstanding bonds that are to be refunded;
(b) the reasons for issuing refunding bonds; and
(c) the term and details of the refunding bonds.

(2) If the refunding bonds are proposed to be issued in an amount greater than the amount of outstanding bonds to be refunded, the board may not authorize the issuance of the bonds until it has conducted a public hearing on the desirability of issuing the bonds, after published and mailed notice as provided in 7-12-2105(2), and found by resolution that the issuance of refunding bonds is in the best interest of the special improvement district.

(3) After the adoption of the required resolution or resolutions, the board may:
(a) sell the refunding bonds at a private negotiated sale; or
(b) at its option, give notice of the sale and sell the refunding bonds in the same manner that other special improvement district bonds are sold.

(4) Bonds may not be refunded by the issuance of refunding bonds unless:
(a) the rate of interest offered on the refunding bonds is at least 1/2 of 1% a year less than the rate of interest on the bonds to be refunded;
(b) there is, or will be on the next payment date, default in the payment of bond principal or interest; or
(c) 50% or more of the installments of special assessments levied in the special improvement district and payable in a single fiscal year have been delinquent for at least 1 year.

(5) (a) Refunding bonds issued pursuant to this section may be issued to refund outstanding bonds in advance of the date on which the bonds mature or are subject to redemption, but the proceeds of the refunding bonds, less any accrued interest or premium received from their sale, must be deposited with other funds appropriated for the payment of the outstanding bonds in escrow with a suitable banking institution or trust company, which may be located either in or out of the state.

(b) Deposited funds must be invested in securities that are general obligations of the United States or securities the principal of and interest on which are guaranteed by the United States. The securities must mature or be callable at the option of the holder on the dates and bear interest at the rates and be payable on the dates as may be required to provide funds sufficient, with any cash deposited in the escrow account, to pay when due:
(i) the interest to accrue on each refunded bond to its maturity or redemption date, if called for redemption;
(ii) the principal on each refunded bond at maturity or upon the redemption date; and
(iii) any redemption premium.

(c) The escrow account must be irrevocably appropriated to the payment of the principal of an interest and redemption premium, if any, on the refunded bonds.

(d) Funds to the credit of the debt service fund for the payment of the refunded bonds and not required for the payment of principal or interest due prior to issuance of the refunding bonds may be appropriated by the board to the escrow account.

(e) The county may pay the reasonable costs and expenses of issuing the refunding bonds and of establishing and maintaining the escrow account.

(6) Refunding bonds may be issued under this section to pay principal of or interest on special improvement district bonds outstanding on April 30, 1985, only if:

(a) the proceeds of the refunding bonds do not redeem the outstanding bonds until one-third or more of the term for which the bonds were issued has expired;

(b) there is a deficiency in the bond account or interest account of the special improvement district fund from which the bonds are payable; or

(c) 50% or more of the installments of special assessments levied in the special improvement district and payable in a single fiscal year have been delinquent for at least 1 year.

History: En. Sec. 25, Ch. 665, L. 1985; amd. Sec. 2, Ch. 631, L. 1987; amd. Sec. 4, Ch. 449, L. 1989.

7-12-2194 and 7-12-2195 reserved.

7-12-2196. Water user entities exempt from special assessments. Rights-of-way, ditches, flumes, pipelines, dams, water rights, reservoirs, equipment, machinery, motor vehicles, and other personal property owned by a nonprofit water company, water users' association, irrigation company, canal company, ditch company, reservoir company, or similar nonprofit water user entity are exempt from every special assessment imposed by any improvement or maintenance district created under Title 7, chapter 12.

History: En. Sec. 1, Ch. 276, L. 1987.

Part 22

Special Provisions for Districts for Lighting

7-12-2201. Maintenance of lighting system. When there has been or shall be created a rural improvement district, according to the provisions of part 21, for the purpose of securing a lighting system for the territory embraced in such rural improvement district, the board of county commissioners of such county may enter into a contract with other persons or corporations for the purpose of furnishing light to said rural improvement district when:

(1) no expense of construction is incurred by such rural improvement district in the installation of such lighting system;

(2) it is necessary only to secure funds for the maintenance and operation of said system; and

(3) lights for said territory can best be secured by entering a contract for such lighting with some other person or corporation.

History: En. Sec. 1, Ch. 58, L. 1933; re-en. Sec. 4601.1, R.C.M. 1935; amd. Sec. 1, Ch. 217, L. 1959; R.C.M. 1947, 16-1629(1).

Cross-References

Board of County Commissioners defined, 7-12-2101.

7-12-2202. Apportionment of costs of maintaining lighting system. (1) The cost of the maintenance and operating service to said rural improvement district may be apportioned among the various tracts of land within said improvement district:

(a) in proportion to the assessed value of said lands within said improvement district, as determined by the board of county commissioners;

(b) at the option of said board and as determined by said board, in proportion to the lineal front footage of each tract, any part of which is in the district and abuts the street or roadway along which the lighting system is to be maintained; or

(c) in proportion to the area, as determined by said board, of that portion of each tract included in the district.

(2) (a) Before the first Monday of September of each year, the board shall pass and finally adopt a resolution levying and assessing upon all the property within the district an amount equal to the whole cost of maintaining said lighting system. The same shall be proportioned against the several tracts of land in said district as provided in this part.

(b) Said resolution levying assessments to defray the cost of maintenance shall be prepared and certified to in the manner as near as may be to a resolution levying assessments for making, constructing, and installing the improvements in said special improvement districts.

History: En. Sec. 1, Ch. 58, L. 1933; re-en. Sec. 4601.1, R.C.M. 1935; amd. Sec. 1, Ch. 217, L. 1959; R.C.M. 1947, 16-1629(part).

Cross-References

Board of County Commissioners defined, 7-12-2101.

7-12-2203. Rural improvement district maintenance fund. (1) The money collected pursuant to 7-12-2202, shall be paid into a fund known as the special improvement district No. .... maintenance fund, the number of which shall correspond with the number of the special improvement district in which the improvements so maintained are situated.

(2) Such funds shall be used to defray the expense of maintenance of said system and for no other purpose.

History: En. Sec. 1, Ch. 58, L. 1933; re-en. Sec. 4601.1, R.C.M. 1935; amd. Sec. 1, Ch. 217, L. 1959; R.C.M. 1947, 16-1629(part).

7-12-2204. Alteration of maintenance district boundaries. The board has the power, by resolution, of changing not more than once a year, the boundaries of any maintenance district.

History: En. Sec. 2, Ch. 58, L. 1933; re-en. Sec. 4601.2, R.C.M. 1935; R.C.M. 1947, 16-1630(part).

7-12-2205. Assessment and certain other charges as lien. Any assessment levied and made for any purpose mentioned in this part, together with all costs and penalties, shall constitute a lien upon and against the property upon which said assessments are made and levied from and after the date of the final passage and adoption of the resolution levying the same. This lien can be only extinguished by payment of such assessments, with all penalties, costs, and interest.

History: En. Sec. 1, Ch. 58, L. 1933; re-en. Sec. 4601.1, R.C.M. 1935; amd. Sec. 1, Ch. 217, L. 1959; R.C.M. 1947, 16-1629(part).

7-12-2206. Application of part. Provisions of this part shall only apply to the method of securing funds for the maintenance of rural improvement districts for lighting systems.

History: En. Sec. 2, Ch. 58, L. 1933; re-en. Sec. 4601.2, R.C.M. 1935; R.C.M. 1947, 16-1630(part).

Part 23

Special Provisions for Districts for Sanitary and Storm Sewers

7-12-2301. Rental provisions of municipal public sewer law applicable to rural districts. The provisions of part 42 of chapter 13 referring to sewer rentals apply to special improvement districts for the constructing and maintaining and operating of sanitary sewers and storm sewers, and the powers conferred on councils in part 42 of chapter 13 are conferred on each board of county commissioners as far as those powers relate to sewer rentals.

History: En. Sec. 15, Ch. 89, L. 1913; re-en. Sec. 5239, R.C.M. 1921; amd. Sec. 1, Ch. 149, L. 1933; re-en. Sec. 5239, R.C.M. 1935; amd. Sec. 3, Ch. 100, L. 1973; R.C.M. 1947, 11-2216(6); amd. Sec. 7, Ch. 251, L. 1979.

Parts 24 through 40 reserved

Part 41

Special Improvement Districts

7-12-4101. Definitions. Unless the context indicates otherwise, as used in this part and part 42, the following definitions apply:

(1) "Blocks" means blocks, whether regular or irregular, that are bounded by main streets or by main streets and a boundary line of the city.

(2) "City" or "municipality" means all corporations organized for municipal purposes.

(3) "City clerk" or "clerk" means any person or officer who is clerk of the council.

(4) "City council" means any body or board that is the legislative department of the government of the city.

(5) "City engineer" means any person or officer who is responsible for the maintenance and improvement of the streets in a city.

(6) "City treasurer" means any person who, under whatever name or title, is the custodian of the funds of the municipality.

(7) "Incidental expenses" means:

(a) the compensation of the city engineer for work done by him;

(b) the cost of printing and advertising as provided in this part and part 42;

(c) the compensation of persons appointed by the city engineer to take charge of and superintend any of the work mentioned in this part;

(d) the expenses of making the assessment for any work authorized by this part;

(e) interest on warrants of the city issued to pay costs of improvements;

(f) costs of issuance of bonds or warrants of the special improvement district, including costs of printing the bonds, bond registration fees, attorneys' and financial consultants' fees, a premium for bond insurance, and any price paid by the original purchaser of the bonds that is less than the face amount thereof;

(g) interest to accrue on bonds or warrants of the special improvement district before assessments levied in the district are collected in amounts and at times sufficient to pay such interest; and

(h) a reasonable administrative fee payable to the city for the creation and administration of the district by the city, its officers, and employees.

(8) "Main street" means such actually opened street as bounds a block.

(9) "Paved" or "repaved" means pavement of stone (whether paving blocks or macadam), of bituminous rock or asphalt, or of wood, brick, or other material (whether patented or not) which the city council adopts by ordinance or resolution.

(10) "Quarter-block", when used in reference to irregular blocks, means all lots or portions of lots having any frontage on either of two intersecting streets halfway from the intersection to the next main street or, when no main street intervenes, all the way to a boundary line of the city.

(11) "Street" means avenues, highways, lanes, alleys, crossings or intersections, courts, and places which have been dedicated and accepted according to the law or in common and undisputed use by the public for a period of not less than 5 years.

(12) "Street intersection" means that parcel of land at the point of juncture or crossing of intersecting streets which lies between lines drawn from corner to corner of all lot lines immediately cornering at such juncture.

(13) "Work", "improved", or "improvement" means all work or the securing of property mentioned in this part and part 42 and also the construction, reconstruction, and repair of all or any portion of work.

History: En. Sec. 31, Ch. 89, L. 1913; re-en. Sec. 5255, R.C.M. 1921; re-en. Sec. 5255, R.C.M. 1935; R.C.M. 1947, 11-2241(part); amd. Sec. 8, Ch. 251, L. 1979; amd. Sec. 26, Ch. 665, L. 1985.

Cross-References

Rural special improvement district, 7-12-2101.

7-12-4102. Authorization for creation of special improvement districts. (1) The city or town council has power to create special improvement districts, designating them by number; to extend the time for payment of assessments levied upon the districts for district improvements for a period not exceeding 20 years or, if refunding bonds are issued pursuant to 7-12-4194, for a period not exceeding 30 years; to make the assessments payable in installments; and to pay all expenses of whatever character incurred in making the improvements with special improvement warrants or bonds.

(2) Whenever the public interest or convenience requires, the city council may:

(a) create special improvement districts for acquiring by purchase, building, constructing, or maintaining devices intended to protect the safety of the public from open ditches carrying irrigation or other water;

(b) create special improvement districts for acquiring by purchase or building and constructing municipal swimming pools and other recreation facilities;

(c) create special improvement districts and order the whole or a portion, either in length or width, of one or more of the streets, avenues, alleys, or places or public ways of the city:

(i) graded or regraded to the official grade;

(ii) planked or replanked;

(iii) paved or repaved;

(iv) macadamized or remacadamized;

(v) graveled or regraveled;

(vi) piled or repiled;

(vii) capped or recapped;

(viii) surfaced or resurfaced;

(ix) oiled or reoiled;

(d) create special improvement districts and order the acquisition, construction, or reconstruction within the districts of:

(i) sidewalks, crosswalks, culverts, bridges, gutters, curbs, steps, parkings (including the planting of grassplots and setting out of trees);

(ii) sewers, ditches, drains, conduits, and channels for sanitary and/or drainage purposes, with outlets, cesspools, manholes, catchbasins, flush tanks, septic tanks, connecting sewers, ditches, drains, conduits, channels, and other appurtenances;

(iii) waterworks, water mains, and extensions of water mains;

(iv) pipes, hydrants, hose connections for irrigating purposes;

(v) appliances for fire protection;

(vi) tunnels, viaducts, conduits, subways, breakwaters, levees, retaining walls, bulkheads, and walls of rock or other material to protect them from overflow or injury by water;

(vii) the opening of streets, avenues, and alleys and the planting of trees on the streets, avenues, and alleys;

(e) create special improvement districts and order the construction or reconstruction in, over, or through property or rights-of-way owned by the city of:

(i) tunnels, sewers, ditches, drains, conduits, and channels for sanitary and/or drainage purposes, with necessary outlets, cesspools, manholes, catchbasins, flush tanks, septic tanks, connection sewers, ditches, drains, conduits, channels, and other appurtenances;

(ii) pipes and hose connections for irrigating; hydrants and appliances for fire protection;

(iii) breakwaters, levees, retaining walls, and bulkheads; and

(iv) walls of rock or other material to protect the streets, avenues, lanes, alleys, courts, places, public ways, and other property in the city from overflow by water;

(f) create special improvement districts to make monetary advances or contributions to aid in the construction of additional natural gas and electric distribution lines and telecommunications facilities in order to extend those public utility services;

(g) create special improvement districts and order work to be done that is considered necessary to improve the whole or a portion of the streets, avenues, sidewalks, alleys, places, or public ways, property, or right-of-way of the city;

(h) create special improvement districts to acquire and improve by purchase, gift, bequest, lease, or other means land to be designated as public park or open-space land;

(i) create special improvement districts for the conversion of overhead utilities to underground locations in accordance with 69-4-311 through 69-4-314; and

(j) maintain, preserve, and care for any of the improvements authorized in this section.

(3) The city governing body may order and create special improvement districts covering projects abutting the city limits and include properties outside the city where the special improvement district abuts and benefits that property. Property owners within the proposed district boundaries outside the city may not be included in the special improvement district if 40% of those property owners protest the creation of the special improvement district. The property outside the city must be treated in a similar manner as to improvements, notices, and assessments as the property inside the city limits. A joint resolution of the city and county must be passed agreeing to the terms of the special improvement district prior to passing the resolution of intention or the resolution creating the special improvement district. A copy of the resolution of intention and the resolution creating the special improvement district must be provided to the county commissioners upon the passage of the respective resolutions.

History: (1)En. Subd. 80, Sec. 5039, R.C.M. 1921; amd. Sec. 1, Ch. 115, L. 1925; amd. Sec. 1, Ch. 20, L. 1927; re-en. Sec. 5039.79, R.C.M. 1947; amd. Sec. 11, Ch. 234, L. 1971; Sec. 11-982, R.C.M. 1947; (2)En. Sec. 2, Ch. 89, L. 1913; amd Sec. 1, Ch. 142, L. 1915; amd. Sec. 1, Ch. 175, L. 1919; re-en. Sec. 5226, R.C.M. 1921; re-en. Sec. 5226, R.C.M. 1935; amd. Sec. 1, Ch. 32, L. 1961; amd. Sec. 1, Ch. 206, L. 1965; Sec. 11-2202, R.C.M. 1947; R.C.M. 1947, 11-982, 11-2202(part); (3)En. Sec. 2, Ch. 342, L. 1981; amd. Sec. 27, Ch. 665, L. 1985; amd. Sec. 1, Ch. 116, L. 1987; amd. Sec. 5, Ch. 449, L. 1989; amd. Sec. 1, Ch. 54, L. 1991; amd. Sec. 2, Ch. 250, L. 1993.

Cross-References

Rural special improvement district, 7-12-2102.

7-12-4103. Formation of district to defray cost of acquiring private property. The city council is also hereby authorized to create a district as hereinafter specified for the purpose of defraying the cost of acquiring private property for the purpose of opening, widening, or extending any street, avenue, or alley within the corporate limits of such city.

History: En. Sec. 2, Ch. 89, L. 1913; amd. Sec. 1, Ch. 142, L. 1915; amd. Sec. 1, Ch. 175, L. 1919; re-en. Sec. 5226, R.C.M. 1921; re-en. Sec. 5226, R.C.M. 1935; amd. Sec. 1, Ch. 32, L. 1961; amd. Sec. 1, Ch. 206, L. 1965; R.C.M. 1947, 11-2202(part).

7-12-4104. Resolution of intention to create special improvement district. (1) Before creating any special improvement district for the purpose of making any of the improvements or acquiring any private property for any purpose authorized by this part, the city council shall pass a resolution of intention to do so.

(2) The resolution shall:

(a) designate the number of such district;

(b) describe the boundaries thereof;

(c) state therein the general character of the improvement or improvements which are to be made and an approximate estimate of the cost thereof; and

(d) specify the method or methods by which the costs of the improvements will be assessed against property in the district.

(3) When any improvement is to be made in paving, the city or town council may, in describing the general character of it in the resolution, describe several kinds of paving.

History: En. Sec. 3, Ch. 89, L. 1913; amd. Sec. 2, Ch. 142, L. 1915; re-en. Sec. 5227, R.C.M. 1921; re-en. Sec. 5227, R.C.M. 1935; amd. Sec. 1, Ch. 261, L. 1959; R.C.M. 1947, 11-2204(1); amd. Sec. 28, Ch. 665, L. 1985.

Cross-References

Rural special improvement district, 7-12-2103.

7-12-4105. Reference to description in resolution of intention sufficient. In all resolutions, notices, orders, and determinations subsequent to the resolution of intention and notice of improvements in any and all improvement districts, it shall be sufficient to briefly describe the work or the assessment district, or both, and to refer to the resolution of intention for the description and further particulars.

History: En. Sec. 7, Ch. 89, L. 1913; re-en. Sec. 5231, R.C.M. 1921; re-en. Sec. 5231, R.C.M. 1935; amd. Sec. 1, Ch. 71, L. 1955; R.C.M. 1935, 11-2208.

Cross-References

Rural special improvement district, 7-12-2104.

7-12-4106. Notice of passage of resolution of intention. (1) Upon having passed the resolution of intention pursuant to 7-12-4104, the council shall give notice of the passage of the resolution of intention.

(2) The notice must be published as provided in 7-1-2121. A copy of the notice must be mailed to each person, firm, or corporation or the agent of the person, firm, or corporation having real property within the proposed district listed in the owner's name upon the last-completed assessment roll for state, county, and school district taxes, at the owner's last-known address, upon the same day that the notice is first published or posted.

(3) (a) The notice must describe the general character of the proposed improvements, state the estimated cost of the improvements, describe generally the method by which the costs of the improvements will be assessed, and designate the time when and the place where the council will hear and pass upon all written protests that may be made against the making or acquisition of the improvements or the creation of the district.

(b) If the revolving fund is to be pledged to secure the payment of bonds and warrants, the notice must include a statement that, subject to the limitations in 7-12-4222:

(i) the general fund of the city or town may be used to provide loans to the revolving fund; or

(ii) a general tax levy may be imposed on all taxable property in the city or town to meet the financial requirements of the revolving fund.

(c) The notice must refer to the resolution on file in the office of the city clerk for the description of the boundaries. If the proposal is for the purchase of an existing improvement, the notice must state the exact purchase price of the existing improvement.

History: En. Sec. 3, Ch. 89, L. 1913; amd. Sec. 2, Ch. 142, L. 1915; re-en. Sec. 5227, R.C.M. 1921; re-en. Sec. 5227, R.C.M. 1935; amd. Sec. 1, Ch. 261, L. 1959; R.C.M. 1947, 11-2204(part); amd. Sec. 29, Ch. 665, L. 1985; amd. Sec. 7, Ch. 229, L. 1995.

Compiler's Comments

1995 Amendment: Chapter 229 in (1) substituted "the resolution of intention pursuant to 7-12-4104" for "such resolution"; in (2), at end of first sentence, substituted "as provided in 7-1-2121" for "for 5 days in a daily newspaper or in some one issue of a weekly paper published in the city or town or, in case no newspaper be published in such city, then by posting for 5 days in three public places in the city or town"; inserted (3)(b) concerning revolving fund; and made minor changes in style. Amendment effective March 24, 1995.

Applicability: Section 16, Ch. 229, L. 1995, provided: "[This act] applies to all special improvement districts and rural special improvement districts created after [the effective date of this act] and, at the option of the city, town, or county, to bonds and warrants issued after [the effective date of this act], if the district was created before [the effective date of this act]." Effective March 24, 1995.

Cross-References

Rural special improvement district, 7-12-2105.

7-12-4107. General provisions related to notice. (1) (a) The notices, resolutions, orders, or other matter required to be published by the provisions of this part or part 42 shall be published in a daily newspaper or in a semiweekly or weekly newspaper to be designated by the council of such city, as often as the same is issued during the period specified for said publication; and no other statute shall govern or be applicable to the publications herein provided for.

(b) In case there is no daily, semiweekly, or weekly newspaper printed or circulated in any such city, then such notices, resolutions, orders, or other matters as are herein required to be published in a newspaper shall be posted and kept posted, for the same length of time as required herein for the publication of the same in a daily, semiweekly, or weekly newspaper, in three of the most public places in such city except as herein otherwise specifically provided.

(2) Proof of the publication or posting of any notice provided for herein shall be made by affidavit of the owner, publisher, printer, or clerk of the newspaper or of the poster of the notice.

(3) No publication or notice other than that provided for in this part or part 42 shall be necessary to give validity to any of the proceedings provided for therein.

(4) The word "twice", as used in this part and part 42 referring to the number of times notices, resolutions, or other matters shall be published, shall be held to mean the publication of the same in two entire issues of a newspaper, one being on one day and the other issue being on a subsequent day of the same or a subsequent week.

History: En. Sec. 31, Ch. 89, L. 1913; re-en. Sec. 5255, R.C.M. 1921; re-en. Sec. 5255, R.C.M. 1935; R.C.M. 1947, 11-2241(4).

Cross-References

Rural special improvement district, 7-12-2106.

7-12-4108. Responsibility for posting and publication of notice. (1) Whenever any resolution, order, notice, or determination is required to be published or posted and the duty of posting or procuring the publication or posting of the same is not specifically enjoined upon any officer of the city, it shall be the duty of the city clerk to post or procure the publication or posting thereof, as the case may be.

(2) No proceeding or step herein shall be invalidated or affected by any error or mistake or departure herefrom as to the officer or person posting or procuring the publication or posting of any resolution, notice, order, or determination hereunder when the same is actually published or posted for the time herein required.

History: En. Sec. 34, Ch. 89, L. 1913; re-en. Sec. 5257, R.C.M. 1921; re-en. Sec. 5257, R.C.M. 1935; R.C.M. 1947, 11-2243.

Cross-References

Rural special improvement district, 7-12-2107.

7-12-4109. Extension of proposed district. The city council may charge the expenses of the work or improvement to lots not fronting on the improvement and which the council in its resolution of intention declares to be, together with the lots abutting the improvement, the property benefited by the work or improvements whenever:

(1) the contemplated work of improvement, in the opinion of the council, is of more than local or ordinary public benefit; or

(2) the total estimated costs and expenses thereof, according to estimates furnished by the city engineer, would exceed one-fifth of the total taxable value of the lots and lands fronting upon said proposed work or improvement according to the valuation fixed by the last assessment roll.

History: En. Sec. 4, Ch. 89, L. 1913; re-en. Sec. 5228, R.C.M. 1921; amd. Sec. 1, Ch. 135, L. 1923; amd. Sec. 1, Ch. 150, L. 1929; re-en. Sec. 5228, R.C.M. 1935; amd. Sec. 29, Ch. 566, L. 1977; R.C.M. 1947, 11-2205; amd. Sec. 30, Ch. 665, L. 1985.

Cross-References

Rural special improvement district, 7-12-2108.

7-12-4110. Protest against proposed work or district. (1) At any time within 15 days after the date of the first publication of the notice of the passage of the resolution of intention, any owner of property liable to be assessed for said work may make written protest against the proposed work or against the extent or creation of the district to be assessed or both.

(2) Such protest must be in writing, identify the property in the district owned by the protestor, and be signed by all the owners of the property. The protest must be delivered to the clerk of the city or town council or commission not later than 5 p.m. of the last day within said 15-day period. Said clerk shall endorse thereon the date and hour of its receipt by him.

History: En. Sec. 5, Ch. 89, L. 1913; amd. Sec. 3, Ch. 142, L. 1915; re-en. Sec. 5229, R.C.M. 1921; amd. Sec. 2, Ch. 135, L. 1923; re-en. Sec. 5229, R.C.M. 1935; amd. Sec. 1, Ch. 36, L. 1939; amd. Sec. 1, Ch. 149, L. 1969; R.C.M. 1947, 11-2206(1); amd. Sec. 31, Ch. 665, L. 1985.

Cross-References

Rural special improvement district, 7-12-2109.

7-12-4111. Who considered owner. (1) The person owning the fee; the person in whom, on the day the action is commenced, appears the legal title to the lot and lands by deed duly recorded in the county recorder's office in each county; or the person in possession of lands, lots or portions of lots, or buildings under claim or exercising acts of ownership over the same for himself or as the executor, administrator, or guardian of the owner shall be regarded, treated, and deemed to be the "owner" for the purpose of this part and part 42, according to the intent and meaning of that word as used in this part and part 42.

(2) In case of property leased, the possession of the tenant or lessee holding and occupying under such persons shall be deemed to be the possession of such owner.

History: En. Sec. 31, Ch. 89, L. 1913; re-en. Sec. 5255, R.C.M. 1921; re-en. Sec. 5255, R.C.M. 1935; R.C.M. 1947, 11-2241(1).

Cross-References

Rural special improvement district, 7-12-2110.

7-12-4112. Hearing on protest. (1) At the next regular meeting of the city or town council or commission after the expiration of the time within which said protest may be made, the city or town council or commission shall proceed to hear and pass upon all protests so made, and its decision shall be final and conclusive.

(2) The council or commission may adjourn said hearing from time to time. Protestants shall have the right to withdraw protest or protests at any time before final action thereon by the council or commission.

(3) In determining whether or not sufficient protests have been filed on a proposed district to prevent further proceedings therein, property owned by a county, city, or town shall be considered to the same effect as other property in the proposed district.

History: En. Sec. 5, Ch. 89, L. 1913; amd. Sec. 3, Ch. 142, L. 1915; re-en. Sec. 5229, R.C.M. 1921; amd. Sec. 2, Ch. 135, L. 1923; re-en. Sec. 5229, R.C.M. 1935; amd. Sec. 1, Ch. 36, L. 1939; amd. Sec. 1, Ch. 149, L. 1969; R.C.M. 1947, 11-2206(part).

Cross-References

Rural special improvement district, 7-12-2111.

7-12-4113. Sufficient protest to bar proceedings — exceptions. (1) Except as provided in subsections (2) and (3), no further proceedings shall be taken for a period of 6 months from the date when said protest shall have been received by said clerk of the city or town council or commission when:

(a) the council or commission finds that such protest is made by the owners of property in the district to be assessed for more than 50% of the cost of the proposed work, in accordance with the method or methods of assessment described in the resolution of intention; or

(b) the cost thereof is to be assessed upon the property within an extended district and the council or commission finds that such protest is made by the owners of more than 50% of the area of the property to be assessed for said improvements.

(2) The council or commission shall have the right to overrule any and all objections and pave the proposed block with gravel and oil surface when the improvement proposed is the paving, with necessary incidentals, of not more than one cross block to connect with streets or avenues already paved for a

continuous distance of three blocks or more running at a right angle (or substantially so) with the single cross block so proposed to be paved.

(3) In case the improvement is the construction of a sanitary sewer, such protest may be overruled by an affirmative vote of a majority of the members of the council or commission unless such protest is made by the owners of property in the district to be assessed for more than 75% of the cost of the district, in accordance with the methods of assessment described in the resolution of intention, in which event the protest must be sustained as to the construction of such sanitary sewer.

History: En. Sec. 5, Ch. 89, L. 1913; amd. Sec. 3, Ch. 142, L. 1915; re-en. Sec. 5229, R.C.M. 1921; amd. Sec. 2, Ch. 135, L. 1923; re-en. Sec. 5229, R.C.M. 1935; amd. Sec. 1, Ch. 36, L. 1939; amd. Sec. 1, Ch. 149, L. 1969; R.C.M. 1947, 11-2206(part); amd. Sec. 32, Ch. 665, L. 1985.

Cross-References

Rural special improvement district, 7-12-2112.

7-12-4114. Resolution creating special improvement district. When no protests have been delivered to the clerk of the city council within 15 days after the date of the first publication of the notice of the passing of the resolution of intention, when a protest shall have been found by said council to be insufficient or shall have been overruled, or when a protest against the extent of the proposed district shall have been heard and denied, immediately thereupon, the council shall be deemed to have acquired jurisdiction to order the proposed improvements. Before ordering any of said proposed improvements, the council shall pass a resolution creating the special improvement district in accordance with the resolution of intention theretofore introduced and passed by the council.

History: En. Sec. 6, Ch. 89, L. 1913; amd. Sec. 4, Ch. 142, L. 1915; re-en. Sec. 5230, R.C.M. 1921; re-en. Sec. 5230, R.C.M. 1935; R.C.M. 1947, 11-2207.

Cross-References

Rural special improvement district, 7-12-2113.

7-12-4115. Statement of allocation of assessments to improvements, repairs, and maintenance. In all cities or towns, the city or town council shall have power and it is hereby made the duty of each council (where it is necessary or advisable in connection with any special improvement district to provide, in addition to the construction of the proposed improvements, for repairs to existing facilities or for maintenance of improvements or repairs or for both such repairs and maintenance) to include in the resolution or ordinance creating such special improvement district or providing for assessments to defray the cost of improvements, repairs, and maintenance, a statement showing the allocation of the total amounts, either in dollars and cents or in percentages of said total amounts, to be assessed or assessed to said different purposes: to improvements, to repairs, if any, and to maintenance, if any.

History: En. Sec. 1, Ch. 39, L. 1953; R.C.M. 1947, 11-2286.

7-12-4116. Designation of nature of improvement district. In all cases set out in 7-12-4115, the city or town council shall designate the special district formed as a special improvement and repair district or a special improvement and maintenance district or a special improvement, repair, and maintenance district, as the case may be.

History: **En. Sec. 2, Ch. 39, L. 1953; R.C.M. 1947, 11-2287.**

7-12-4117. Combination of several improvements in one resolution. The city council may include in one proceeding under one resolution of intention and in one contract any of the different kinds of work mentioned in this part and any number of streets and rights-of-way or portions thereof, and it may except therefrom any of said work already done upon a street to the official grade.

History: **En. Sec. 3, Ch. 89, L. 1913; amd. Sec. 2, Ch. 142, L. 1915; re-en. Sec. 5227, R.C.M. 1921; re-en. Sec. 5227, R.C.M. 1935; amd. Sec. 1, Ch. 261, L. 1959; R.C.M. 1947, 11-2204(part).**

7-12-4118. Adjournment of hearings. Whenever in proceedings hereunder a time and place for hearing are fixed by the city council and from any cause the hearing is not then and there held or regularly adjourned to a fixed time and place, the power or jurisdiction of the council in the premises shall not thereby be divested or lost, but the council may proceed anew to fix a time and place for the hearing and cause notice thereof to be given by publication by at least one insertion in a daily, semiweekly, or weekly newspaper, such publication to be at least 5 days before the date of the hearing. Thereupon the council shall have power to act as in the first instance.

History: **En. Sec. 32, Ch. 89, L. 1913; re-en. Sec. 5256, R.C.M. 1921; re-en. Sec. 5256, R.C.M. 1935; R.C.M. 1947, 11-2242.**

Cross-References

Rural special improvement district, 7-12-2115.

7-12-4119. Appointment of person to serve as city engineer. In all those cities where there is no city engineer, the city council is hereby authorized and empowered to appoint a suitable person to discharge the duties laid down as those of the city engineer in this part, and all provisions of this part applicable to the city engineer shall apply to such person so appointed.

History: **En. Sec. 31, Ch. 89, L. 1913; re-en. Sec. 5255, R.C.M. 1921; re-en. Sec. 5255, R.C.M. 1935; R.C.M. 1947, 11-2241(part).**

Cross-References

Rural special improvement district, 7-12-2116.

7-12-4120. Provision for municipalities not having mayor. In municipalities in which there is no mayor, the duties imposed upon said officer by the provisions of this part and part 42 shall be performed by the president of the council or other chief executive officer of the municipality.

History: **En. Sec. 31, Ch. 89, L. 1913; re-en. Sec. 5255, R.C.M. 1921; re-en. Sec. 5255, R.C.M. 1935; R.C.M. 1947, 11-2241(10).**

Cross-References

Rural special improvement district, 7-12-2116.

7-12-4121. Record of expenses to be kept by city engineer. It shall be the duty of the city engineer to keep an account of all costs and expenses incurred in his office in connection with every special improvement district and certify the same to the city clerk.

History: **En. Sec. 22, Ch. 89, L. 1913; re-en. Sec. 5246, R.C.M. 1921; re-en. Sec. 5246, R.C.M. 1935; R.C.M. 1947, 11-2228(part).**

Cross-References

Rural special improvement district, 7-12-2117.

7-12-4122. Role of city clerk. It shall be the duty of the city clerk to prepare all necessary schedules and resolutions levying taxes and assessments in such special improvement districts.

History: **En. Sec. 22, Ch. 89, L. 1913; re-en. Sec. 5246, R.C.M. 1921; re-en. Sec. 5246, R.C.M. 1935; R.C.M. 1947, 11-2228(part).**

Cross-References

Rural special improvement district, 7-12-2118.

7-12-4123. Manner of making demands for incidental expenses. All demands for incidental expenses mentioned in 7-12-4101(7), except the administrative fee of the city and interest payable on warrants or bonds of the district, shall be presented to the city clerk by itemized bill, duly verified by oath of the demandant.

History: **En. Sec. 31, Ch. 89, L. 1913; re-en. Sec. 5255, R.C.M. 1921; re-en. Sec. 5255, R.C.M. 1935; R.C.M. 1947, 11-2241(part); amd. Sec. 33, Ch. 665, L. 1985.**

Cross-References

Rural special improvement district, 7-12-2119.

7-12-4124. Water user entities exempt from special assessments. Rights-of-way, ditches, flumes, pipelines, dams, water rights, reservoirs, equipment, machinery, motor vehicles, and other personal property owned by a nonprofit water company, water users' association, irrigation company, canal company, ditch company, reservoir company, or similar nonprofit water user entity are exempt from every special assessment imposed by any improvement or maintenance district created under Title 7, chapter 12.

History: **En. Sec. 1, Ch. 276, L. 1987.**

7-12-4125 through 7-12-4129 reserved.

7-12-4130. Transfer of operation, control, and ownership of improvement district facilities to a utility. Whenever a special improvement district has been created in accordance with the provisions of this part for the purpose of providing the facilities through which a regulated utility is to provide utility services to the district, the commissioners may, upon such terms and conditions as may be agreed to, transfer the operation, control, and ownership of the facilities to the regulated utility for use by the utility to provide utility services.

History: **En. Sec. 1, Ch. 325, L. 1983.**

7-12-4131. Modification of trafficways and courts for special improvement districts. All streets, alleys, places, or courts in the municipalities of this state, now open or dedicated or which may hereafter be opened or dedicated to public use, are open public streets, alleys, places, or courts for the purposes of this part. The city council of each municipality may establish and change the grades of the streets, alleys, places, or courts and fix the width thereof and may acquire private property for right-of-way and order to be done any of the work mentioned in this part under the proceedings described in this part.

History: **En. Sec. 1, Ch. 89, L. 1913; re-en. Sec. 5225, R.C.M. 1921; re-en. Sec. 5225, R.C.M. 1935; amd. Sec. 1, Ch. 136, L. 1967; amd. Ch. 280, L. 1971; amd. Sec. 28, Ch. 566, L. 1977; R.C.M. 1947, 11-2201(1).**

7-12-4132. Power to require underground placement of utilities within district. (1) Unless the purpose of the special improvement district is the conversion of existing overhead utilities to an underground location, the city council has the same jurisdiction and powers as provided in 7-12-4102 and 7-12-4103 (before doing any of the work mentioned in this part) to require a public service corporation or company, firm, or person occupying the streets, avenues, or alleys, at their own expense and within a reasonable time to be fixed by the council, to place in an underground conduit, in a manner as may be directed by the council, all wires; electric conduits; or telephone, telegraph, power, or power transmission lines or appurtenances to them or appliances owned, held, or enjoyed in connection with them.

(2) The whole cost so assessed may at no time exceed the costs incurred.

History: **En. Sec. 2, Ch. 89, L. 1913; amd. Sec. 1, Ch. 142, L. 1915; amd. Sec. 1, Ch. 175, L. 1919; re-en. Sec. 5226, R.C.M. 1921; re-en. Sec. 5226, R.C.M. 1935; amd. Sec. 1, Ch. 32, L. 1961; amd. Sec. 1, Ch. 206, L. 1965; R.C.M. 1947, 11-2202(2); amd. Sec. 1, Ch. 594, L. 1979; amd. Sec. 3, Ch. 250, L. 1993.**

7-12-4133. Power to require certain utility connections. (1) The city or town council shall have power to require connections from gas pipes, water pipes, steam heating pipes, and sewers to the curb line of the adjacent property to be made before the permanent improvement of the streets whereon they are located and to regulate the making of such connections on the already improved streets or on unimproved streets.

(2) (a) In case the owners of the property on such streets shall fail to make such connections within the time fixed by the council, the council may cause such connections to be made and shall assess against the property in front of which said connections are made the entire cost and expense thereof.

(b) All assessments levied under the provisions of this section shall be enforced and collected in the same manner as other special assessments provided for in part 44 of chapter 6 and amendments thereof. All such assessments shall be a lien against the property.

History: **En. Sec. 2, p. 213, L. 1897; re-en. Sec. 3368, Rev. C. 1907; re-en. Sec. 5226a, R.C.M. 1921; re-en. Sec. 5226.1, R.C.M. 1935; R.C.M. 1947, 11-2203.**

7-12-4134. Special provision for paving street in which car tracks are located. Where the special improvement contemplated is the paving of a street in which car tracks have been constructed, the city shall have the power and authority to order the general character of the material between the rails and 1 foot on each side of the rails to be of a different kind from that used in the remainder of the street. The general character of the material to be used between the car tracks and 1 foot on each side of the rails shall be described in the resolution of intention in the same manner as the general character of the material used for the rest of the contemplated pavement.

History: **En. Sec. 3, Ch. 89, L. 1913; amd. Sec. 2, Ch. 142, L. 1915; re-en. Sec. 5227, R.C.M. 1921; re-en. Sec. 5227, R.C.M. 1935; amd. Sec. 1, Ch. 261, L. 1959; R.C.M. 1947, 11-2204(3).**

7-12-4135. Responsibility for repairs due to operation of street railway. (1) Whenever any portion of the surface of a paved street is occupied or used for railway or street railway purposes, it shall be the duty of the owner or operator of such railway or street railway to fully repair any injury or damage to such pavement caused by such railway or street railway, either in the operation of its cars or in the laying or repair of its tracks.

(2) In case of a failure or refusal of such owner or operator to so repair such pavement within a reasonable time after notice by the city council or commission, the council or commission is authorized and empowered to cause such repairs to be made and to assess the cost thereof to such owner or operator and to enforce collection thereof as in the case of taxes.

History: **En. Sec. 14, Ch. 89, L. 1913; re-en. Sec. 5238, R.C.M. 1921; amd. Sec. 1, Ch. 163, L. 1925; re-en. Sec. 5238, R.C.M. 1935; amd. Sec. 1, Ch. 39, L. 1955; amd. Sec. 1, Ch. 330, L. 1971; amd. Sec. 1, Ch. 85, L. 1973; R.C.M. 1947, 11-2214(2).**

7-12-4136. Maintenance of improvements. Where trees have been planted or grassplots constructed and grass sown thereon or any one or more of said improvements have been made in a special improvement district, it is hereby made the duty of the council of said city or town to cause said trees and grass to be watered, the grass cut, and trees trimmed and to otherwise maintain and preserve said improvements as the council shall deem suitable and proper.

History: **En. Sec. 18, Ch. 89, L. 1913; re-en. Sec. 5242, R.C.M. 1921; re-en. Sec. 5242, R.C.M. 1935; amd. Sec. 1, Ch. 124, L. 1943; R.C.M. 1947, 11-2224(part).**

Cross-References

Rural special improvement district, 7-12-2120.

7-12-4137 through 7-12-4140 reserved.

7-12-4141. Bid for work — exception. (1) Except as provided in subsection (4), the city council may call for bids or proposals for several kinds and types of materials for the improvements proposed to be made under this part and part 42, reserving the right to select the kind or type of material to be used in making the improvements after the bids or proposals have been opened, examined, and declared.

(2) Notice inviting proposals and referring to the specifications on file must be published at least twice in a daily, semiweekly, or weekly newspaper published and circulated in the city and designated by the council for that purpose, and in case there is no newspaper published in the city, then it must be posted in at least three public places.

(3) The time fixed for the opening of bids may not be less than 5 days or more than 12 days from the time of the final publication of the notice. If the advertisement is made by posting, 15 days must elapse, including the day of posting, between the time of the posting of the advertisement and the day set for opening bids. The proposals or bids offered must be accompanied by bid security as provided for in Title 18, chapter 1, part 2. The proposals or bids must be delivered to the clerk of the city council.

(4) If the proposed improvement is the conversion of overhead utilities to an underground location, the work must be performed by the public utility responsible for the cost and feasibility report required under 69-4-313.

History: **En. Sec. 8, Ch. 89, L. 1913; amd. Sec. 5, Ch. 142, L. 1915; re-en. Sec. 5232, R.C.M. 1921; amd. Sec. 1, Ch. 173, L. 1931; re-en. Sec. 5232, R.C.M. 1935; amd. Sec. 1, Ch.**

138, L. 1974; amd. Sec. 1, Ch. 220, L. 1975; R.C.M. 1947, 11-2209(part); amd. Sec. 4, Ch. 250, L. 1993.

Cross-References

Rural special improvement district, 7-12-2131.

7-12-4142. Opening of bids. The bids shall be opened in public at a time and place to be designated by the city council in the notice inviting bid proposals made pursuant to 7-12-4141.

History: En. Sec. 8, Ch. 89, L. 1913; amd. Sec. 5, Ch. 142, L. 1915; re-en. Sec. 5232, R.C.M. 1921; amd. Sec. 1, Ch. 173, L. 1931; re-en. Sec. 5232, R.C.M. 1935; amd. Sec. 1, Ch. 138, L. 1974; amd. Sec. 1, Ch. 220, L. 1975; R.C.M. 1947, 11-2209(part); amd. Sec. 1, Ch. 6, L. 1989.

Cross-References

Rural special improvement district, 7-12-2134.

7-12-4143. Decision on award of contract. (1) The city council may award the contract for said work or improvement to the lowest responsible bidder at the prices named in his bid and shall reject all proposals or bids other than the lowest regular proposal or bid of any responsible bidder.

(2) The council may reject any and all proposals or bids should it deem this for the public good and may also reject the bid of any party who has been delinquent or unfaithful in any former contract with the municipality.

History: En. Sec. 8, Ch. 89, L. 1913; amd. Sec. 5, Ch. 142, L. 1915; re-en. Sec. 5232, R.C.M. 1921; amd. Sec. 1, Ch. 173, L. 1931; re-en. Sec. 5232, R.C.M. 1935; amd. Sec. 1, Ch. 138, L. 1974; amd. Sec. 1, Ch. 220, L. 1975; R.C.M. 1947, 11-2209(part).

Cross-References

Rural special improvement district, 7-12-2135.

7-12-4144. Procedure if all bids rejected or no bids received. If the bids are rejected or no bids are received, the city council may, at any time within 2 years thereafter and whenever and as often as the council deems it advantageous, readvertise for proposals or bids for the performance of the work as herein provided without further proceedings and thereafter proceed in the manner provided in 7-12-4141 through 7-12-4145.

History: En. Sec. 8, Ch. 89, L. 1913; amd. Sec. 5, Ch. 142, L. 1915; re-en. Sec. 5232, R.C.M. 1921; amd. Sec. 1, Ch. 173, L. 1931; re-en. Sec. 5232, R.C.M. 1935; amd. Sec. 1, Ch. 138, L. 1974; amd. Sec. 1, Ch. 220, L. 1975; R.C.M. 1947, 11-2209(part).

Cross-References

Rural special improvement district, 7-12-2136.

7-12-4145. Procedure for dealing with bid securities. (1) If bids are rejected, the city council shall thereupon return to the proper parties the bid securities corresponding to the bids so rejected.

(2) The bid securities accompanying such accepted proposals or bids shall be held by the city clerk of said city until the contract for doing said work, as hereinafter provided, has been entered into either by said lowest bidder or by the owners of over 75% of the frontage, whereupon said bid security shall be returned to said bidder.

(3) If said bidder fails, neglects, or refuses to enter into the contract to perform said work or improvements as hereinafter provided, then the bid

securities accompanying his bid and the amount therein mentioned shall be declared to be forfeited to said city and shall be collected by it and paid into the general fund.

History: En. Sec. 8, Ch. 89, L. 1913; amd. Sec. 5, Ch. 142, L. 1915; re-en. Sec. 5232, R.C.M. 1921; amd. Sec. 1, Ch. 173, L. 1931; re-en. Sec. 5232, R.C.M. 1935; amd. Sec. 1, Ch. 138, L. 1974; amd. Sec. 1, Ch. 220, L. 1975; R.C.M. 1947, 11-2209(part); amd. Sec. 34, Ch. 665, L. 1985.

Cross-References

Rural special improvement district, 7-12-2137.

7-12-4146. Retroactive application of bid procedures. The provisions of 7-12-4141 through 7-12-4145 shall be applicable to all special improvement districts created within 1 year preceding March 16, 1931.

History: En. Sec. 8, Ch. 89, L. 1913; amd. Sec. 5, Ch. 142, L. 1915; re-en. Sec. 5232, R.C.M. 1921; amd. Sec. 1, Ch. 173, L. 1931; re-en. Sec. 5232, R.C.M. 1935; amd. Sec. 1, Ch. 138, L. 1974; amd. Sec. 1, Ch. 220, L. 1975; R.C.M. 1947, 11-2209(part).

7-12-4147. Procedure for property owners to do improvement work. The owners of three-fourths of the frontage of lots and lands liable to be assessed or their agents, who shall make oath that they are such owners or agents, shall not be required to present sealed proposals or bids but may, within 3 days after the award pursuant to 7-12-4143, elect to take such work and enter into a written contract to do the whole work at a price at least 5% less than the price at which the same has been awarded. All work done under such contract shall be subject to the same plans and specifications governing the lowest responsible bidder.

History: En. Sec. 9, Ch. 89, L. 1913; re-en. Sec. 5233, R.C.M. 1921; re-en. Sec. 5233, R.C.M. 1935; R.C.M. 1947, 11-2210(part).

7-12-4148. Contract with successful bidder. Should the owners referred to in 7-12-4147 fail to elect to take said work, to enter into a written contract therefor within 3 days, or to commence the work within 15 days after the date of such written contract and to prosecute the same with diligence to completion, it shall be the duty of the city council to enter into a contract with the original bidder to whom the contract was awarded at the prices specified in his bid.

History: En. Sec. 9, Ch. 89, L. 1913; re-en. Sec. 5233, R.C.M. 1921; re-en. Sec. 5233, R.C.M. 1935; R.C.M. 1947, 11-2210(part).

7-12-4149. Procedure if successful bidder does not enter into contract. (1) If the original bidder neglects, fails, or refuses for 15 days after the notice of award to enter into the contract, then the city council, without further proceedings, shall again advertise for proposals or bids as in the first instance and award the contract for said work to the then-lowest regular bidder.

(2) Should no bids be received in response to the call for proposals, the council may again advertise for bids under the same proceedings at any time within 6 months from the time set for the last reception of bids and let the contract to the then-lowest bidder. Such delay shall in no way affect the validity of any of the proceedings or assessments levied thereunder.

History: En. Sec. 10, Ch. 89, L. 1913; re-en. Sec. 5234, R.C.M. 1921; amd. Sec. 2, Ch. 173, L. 1931; re-en. Sec. 5234, R.C.M. 1935; R.C.M. 1947, 11-2211(part).

7-12-4150. Effect of failure to enter contract. The bids of all persons and the election of all owners, as aforesaid, who have failed to enter into the contract shall be rejected in any bidding or election subsequent to the first for the same work.

History: En. Sec. 10, Ch. 89, L. 1913; re-en. Sec. 5234, R.C.M. 1921; amd. Sec. 2, Ch. 173, L. 1931; re-en. Sec. 5234, R.C.M. 1935; R.C.M. 1947, 11-2211(part).

7-12-4151. Contractor's bond for successful completion of work. All contractors, contracting owners included, shall, at the time of executing any contract for street work, execute a bond to the satisfaction and approval of the city council in the form and manner provided for in Title 18, chapter 2, part 2.

History: En. Sec. 12, Ch. 89, L. 1913; re-en. Sec. 5236, R.C.M. 1921; re-en. Sec. 5236, R.C.M. 1935; amd. Sec. 2, Ch. 220, L. 1975; R.C.M. 1947, 11-2213.

Cross-References

Rural special improvement district, 7-12-2138.

7-12-4152. Procedure if person entering contract defaults on work. (1) If the contractor or owner who may have taken any contract does not complete the same within the time limited in the contract or within such further time as the city council may give him, the city engineer shall report such delinquency to the council.

(2) (a) The council may relet the unfinished portion of said work after pursuing the formalities prescribed in 7-12-4141 through 7-12-4145 for the letting of the whole in the first instance.

(b) The city shall have the right, at its option, to complete the contract and deduct any cost in excess of the contract price thereof from any money, bonds, or warrants due such contractor or owners. In the event there is no money, bonds, or warrants due such contractor or owners from which to deduct such cost, then the city shall have the right to sue such contractor or owners and recover from him such cost.

History: En. Sec. 11, Ch. 89, L. 1913; amd. Sec. 6, Ch. 142, L. 1915; re-en. Sec. 5235, R.C.M. 1921; re-en. Sec. 5235, R.C.M. 1935; R.C.M. 1947, 11-2212.

Cross-References

Rural special improvement district, 7-12-2139.

7-12-4153. Purchase of existing improvement. If the proposed improvement consists of the purchase of an existing improvement, the city council may, after the creation of the special improvement district and after ordering the proposed improvement, enter into a contract for the purchase of the improvement, upon such terms as it considers just, without advertising for bids or proposals. However, the total purchase price of the existing improvement may not exceed the amount set forth in the notice required by 7-12-4106.

History: En. Sec. 35, Ch. 665, L. 1985.

7-12-4154 through 7-12-4160 reserved.

7-12-4161. Choice in manner of assessing costs. (1) Except as provided in subsection (2), to defray the cost of making or acquiring any of the improvements provided for in this part, including incidental expenses, the city council or commission shall adopt one of the methods of assessment, where applicable, provided in 7-12-4162 through 7-12-4165 for each improvement to be made or acquired for the benefit of the district.

(2) The city council may use one or any combination of methods of assessment in a single special improvement district, and if more than one improvement is undertaken, each lot or parcel of land in the district need not be assessed for the cost of all the improvements.

History: En. Sec. 14, Ch. 89, L. 1913; re-en. Sec. 5238, R.C.M. 1921; amd. Sec. 1, Ch. 163, L. 1925; re-en. Sec. 5238, R.C.M. 1935; amd. Sec. 1, Ch. 39, L. 1955; amd. Sec. 1, Ch. 330, L. 1971; amd. Sec. 1, Ch. 85, L. 1973; R.C.M. 1947, 11-2214(part); amd. Sec. 36, Ch. 665, L. 1985.

7-12-4162. Assessment of costs — area option — assessed valuation option — equal amount option. (1) (a) The city council or commission shall assess the entire cost of an improvement against benefited property in the district, each lot or parcel of land assessed within such district to be assessed for that part of the whole cost which its assessable area bears to the assessable area of all benefited lots or parcels in the district, exclusive of streets, avenues, alleys, and public places. For the purposes of this subsection, "assessable area" means an area of a lot or parcel of land representing the benefit conferred on the lot or parcel by the improvement. Assessable area may be less than but may not exceed the actual area of the lot or parcel.

(b) The council or commission, in its discretion, shall have the power to pay the whole or any part of the cost of any street, avenue, or alley intersection out of any funds in its hands available for that purpose or to include the whole or any part of such costs within the amount of the assessment to be paid by the benefited property in the district.

(c) In order to equitably apportion the cost of any of the improvements herein provided for between that land within the district which lies within 25 feet of the line of the street on which the improvement is to be made and all other benefited land within the district, the council or commission may, in the resolution creating any improvement district, provide that the amount of the assessment against the property in such district to defray the cost of such improvements shall be so assessed that each square foot of land within the district lying within 25 feet of the line of the street on which the improvements therein provided for are made shall bear double the amount of cost of such improvements per square foot of such land that each square foot of any other benefited land within the district shall bear.

(2) The city council or city commission may assess the cost of an improvement against each lot or parcel of land in the district based on the assessed value of the benefited lots or parcels of land within the district if the council or commission determines such assessment to be equitable and in proportion to and not exceeding the benefits derived from the improvement by the lot or parcel.

(3) The city council or city commission may assess each lot or parcel of land in the district an equal amount based upon the total cost of the improvement.

History: En. Sec. 14, Ch. 89, L. 1913; re-en. Sec. 5238, R.C.M. 1921; amd. Sec. 1, Ch. 163, L. 1925; re-en. Sec. 5238, R.C.M. 1935; amd. Sec. 1, Ch. 39, L. 1955; amd. Sec. 1, Ch. 330, L. 1971; amd. Sec. 1, Ch. 85, L. 1973; R.C.M. 1947, 11-2214(1)(a); amd. Sec. 37, Ch. 665, L. 1985; (2)En. Sec. 5, Ch. 631, L. 1987; amd. Sec. 2, Ch. 269, L. 1993.

Cross-References

Rural special improvement district, 7-12-2151.

7-12-4163. Assessment of costs — frontage option. (1) The city council or commission shall assess the cost of an improvement against benefited lots or parcels in the district, each lot or parcel of land within such district bordering or abutting upon a street or streets whereon or wherein the improvement has been made to be assessed in proportion to the lineal feet abutting or bordering the same.

(2) The council or commission, in its discretion, shall have the power to pay the whole or any part of the cost of any street, avenue, or alley intersections out of any funds in its hands available for that purpose or to include the whole or any part of such costs within the amount of the assessment to be paid by the benefited property in the district.

History: En. Sec. 14, Ch. 89, L. 1913; re-en. Sec. 5238, R.C.M. 1921; amd. Sec. 1, Ch. 163, L. 1925; re-en. Sec. 5238, R.C.M. 1935; amd. Sec. 1, Ch. 39, L. 1955; amd. Sec. 1, Ch. 330, L. 1971; amd. Sec. 1, Ch. 85, L. 1973; R.C.M. 1947, 11-2214(part); amd. Sec. 38, Ch. 665, L. 1985.

Cross-References

Rural special improvement district, 7-12-2151.

7-12-4164. Assessment of costs — utility service connections — option. The city council or commission may assess utility service connections upon a lump sum based on the bid price in the improvement district contract and assess only the lots, tracts, or parcels of land served by the utility connection or connections within the special improvement district, so long as such assessment is equitable.

History: En. Sec. 14, Ch. 89, L. 1913; re-en. Sec. 5238, R.C.M. 1921; amd. Sec. 1, Ch. 163, L. 1925; re-en. Sec. 5238, R.C.M. 1935; amd. Sec. 1, Ch. 39, L. 1955; amd. Sec. 1, Ch. 330, L. 1971; amd. Sec. 1, Ch. 85, L. 1973; R.C.M. 1947, 11-2214(1)(c); amd. Sec. 39, Ch. 665, L. 1985.

Cross-References

Rural special improvement district, 7-12-2151.

7-12-4165. Assessment of costs — offstreet parking option. (1) When the purpose of the assessment is for the establishment and/or improvement of offstreet parking as provided in this section, the city council or commission shall assess, against the real property specifically benefited by the offstreet parking facilities, the cost of the developments involved in proportion to the benefits received by each benefited tract of land within said district.

(2) In determining the benefit to be received by each parcel of land, the council or commission shall consider:

(a) the relative distance of the parking facility from each parcel of land within the area of the special improvement district;

(b) the relative needs of parking spaces for each parcel of land located within the boundaries of said district, either as established by the city zoning ordinance, if any, or otherwise, with relation to the use of said parcel;

(c) the assessed value of each parcel within said district;

(d) the square footage of each parcel within said district as it relates to the whole;

(e) the square footage of floorspace in any improvements on the parcel and the various uses of such floorspace;

(f) the availability of existing onsite parking space on any parcel of land within the district.

History: En. Sec. 14, Ch. 89, L. 1913; re-en. Sec. 5238, R.C.M. 1921; amd. Sec. 1, Ch. 163, L. 1925; re-en. Sec. 5238, R.C.M. 1935; amd. Sec. 1, Ch. 39, L. 1955; amd. Sec. 1, Ch. 330, L. 1971; amd. Sec. 1, Ch. 85, L. 1973; R.C.M. 1947, 11-2214(part); amd. Sec. 40, Ch. 665, L. 1985.

Cross-References

Rural special improvement district, 7-12-2151.

7-12-4166. Land fronting excepted work not subject to assessment. The lots or portions of lots fronting upon excepted work referred to in 7-12-4117, already done, shall not be included in the assessment for the class of work from which the exception is made, provided that this shall not be construed so as to affect the special provisions as to grading contained in 7-12-4167.

History: En. Sec. 3, Ch. 89, L. 1913; amd. Sec. 2, Ch. 142, L. 1915; re-en. Sec. 5227, R.C.M. 1921; re-en. Sec. 5227, R.C.M. 1935; amd. Sec. 1, Ch. 261, L. 1959; R.C.M. 1947, 11-2204(4).

7-12-4167. Provision for grading street by owner of abutting property. (1) It shall be lawful for the owner or owners of the lots or land fronting upon any street the width and grade of which shall have been established by the city council or commission to perform, at his or their own expense (after obtaining permission from the council or commission to do so but before said council or commission has passed its resolution of intention to order grading exclusive of this), any grading upon said street, to its full width or to the centerline thereof and to its grade, as then established, and thereupon to procure, at his or their own expense, a certificate from the city engineer setting forth the number of cubic yards of cutting and filling made by him or them in such grading and proportions performed by each owner and that the same is done to establish width and grade of said street or to the centerline thereof and thereafter to file said certificate with the city engineer. The engineer shall record the certificate in a properly indexed book kept for that purpose in his office.

(2) (a) Thereafter, whenever the council or commission orders the grading of said street or any portion thereof on which any grading, certified as provided in subsection (1), has been done, the bids and contracts must express the price by the cubic yard for cutting and filling in grading. The owner or owners and his or their successors in interest shall be entitled to credit on the assessment upon his or their lots and lands fronting on said street for the grading thereof to the amount of the cubic yards of cutting and filling set forth in his or their certificate, at the prices named in the contract for said cutting and filling or, if the grade meanwhile has been duly altered, only for so much of said certified work as would be required for grading to the altered grade. Such owner or owners shall not be entitled to such credit as may be in excess of the assessments for grading upon the lots and lands owned by him or them and proportionately assessed for the whole of said grading.

(b) The city clerk shall include in the assessment, for the whole of said grading upon the same grade, the number of cubic yards of cutting and filling set forth in any and all certificates so recorded in his office, or for the whole of said grading to the duly altered grade, so much of said certified work as would be required for grading thereto and shall enter corresponding credits, deducting the same as payments upon the amounts assessed against the lots and land owned, respectively, by said certified owners and their successors in interest; provided, however, that he shall not so include any grading quantities or credit any sums in excess of the proportionate assessments for the whole of the grading which are made upon any lots and lands fronting upon said street and belonging to any such certified owners or their successors in interest.

History: En. Sec. 14, Ch. 89, L. 1913; re-en. Sec. 5238, R.C.M. 1921; amd. Sec. 1, Ch. 163, L. 1925; re-en. Sec. 5238, R.C.M. 1935; amd. Sec. 1, Ch. 39, L. 1955; amd. Sec. 1, Ch. 330, L. 1971; amd. Sec. 1, Ch. 85, L. 1973; R.C.M. 1947, 11-2214(4), (5).

7-12-4168. Provision for work other than grading done by owner of property. Whenever any owner or owners of any lots and lands fronting on any street shall have heretofore done or shall hereafter do any work (excepting grading) on such street in front of any block at his or their own expense and the city council or commission shall subsequently order any work to be done of the same class in front of the same block, said work so done at the expense of such owner or owners shall be excepted from the order ordering work to be done, provided that the work so done at the expense of such owner or owners shall be upon the official grade and in condition satisfactory to the city engineer at the time said order is passed.

History: En. Sec. 14, Ch. 89, L. 1913; re-en. Sec. 5238, R.C.M. 1921; amd. Sec. 1, Ch. 163, L. 1925; re-en. Sec. 5238, R.C.M. 1935; amd. Sec. 1, Ch. 39, L. 1955; amd. Sec. 1, Ch. 330, L. 1971; amd. Sec. 1, Ch. 85, L. 1973; R.C.M. 1947, 11-2214(6).

7-12-4169. Incidental expenses considered as cost of improvements — costs for bonds or warrants secured by revolving fund — district reserve account. (1) Incidental expenses connected with the formation of a special improvement district, including costs of preparation of plans, specifications, maps, and plats; engineering, superintendence, and inspection; preparation of assessment rolls; and the other incidental expenses described in 7-12-4101(7) are considered a part of the cost of making the improvements within the special improvement district.

(2) If the bonds or warrants are secured by the revolving fund under 7-12-4225, the costs of any improvement must include an amount equal to 5% of the principal amount of any bonds or warrants to be issued, which must be deposited in the revolving fund created in 7-12-4221.

(3) (a) Subject to the provisions of subsections (3)(b) through (3)(e), the city or town council may create a district reserve account.

(b) As part of the original costs of the improvements, the city or town council may include an amount, in addition to the amount, if any, specified in subsection (2), not to exceed 5% of the principal amount of any special improvement district bonds or warrants issued. The amount must be deposited in a district reserve account created and maintained in the district fund.

(c) If there are insufficient funds in the district bond and interest accounts to pay when due the principal of and the interest on bonds or warrants, the district reserve account, if established, must be used to pay the principal of and the interest on the bonds or warrants issued against the district fund.

(d) If bonds or warrants are secured by the revolving fund, the district reserve account, if established, must be exhausted before a loan may be made from the revolving fund pursuant to 7-12-4223.

(e) Money remaining in the district reserve account after the principal and interest on all bonds and warrants drawn on the district have been paid or discharged must be transferred to the revolving fund.

(4) The establishment of a district reserve account does not preclude the city or town council from requiring additional security from owners of real property in the district.

History: En. Sec. 22, Ch. 89, L. 1913; re-en. Sec. 5246, R.C.M. 1921; re-en. Sec. 5246, R.C.M. 1935; R.C.M. 1947, 11-2228(part); amd. Sec. 1, Ch. 435, L. 1981; amd. Sec. 41, Ch. 665, L. 1985; amd. Sec. 8, Ch. 229, L. 1995.

Compiler's Comments

1995 Amendment: Chapter 229 in (1), at beginning, substituted "Incidental expenses" for "The costs and expenses connected with and incidental to" and near end, after "cost", deleted "and expenses"; in (2), at beginning, inserted "If the bonds or warrants are secured by the revolving fund under 7-12-4225" and substituted "must include an amount equal to 5%" for "may at the option of the municipal governing body, include an amount not to exceed 5%"; inserted (3) concerning district reserve account; inserted (4) concerning additional security from real property owners; and made minor changes in style. Amendment effective March 24, 1995.

Applicability: Section 16, Ch. 229, L. 1995, provided: "[This act] applies to all special improvement districts and rural special improvement districts created after [the effective date of this act] and, at the option of the city, town, or county, to bonds and warrants issued after [the effective date of this act], if the district was created before [the effective date of this act]." Effective March 24, 1995.

Cross-References

Rural special improvement district, 7-12-2153.

7-12-4170. Payment of damages incurred as a result of improvements. Whenever the owner or anyone interested in any property situated within any special improvement district, after filing with the clerk a written notice claiming that his property has been damaged, is awarded or recovers any amount because of damages sustained by the property because of the construction of any improvement in the special improvement district:

(1) if the resolution levying the assessment to defray the cost of making the improvement in the district is not passed and adopted by the city council, the amount to be recovered shall be added to and constitute a part of the cost of making the improvement; but

(2) if the resolution levying the assessment to defray the costs and expenses of making the improvement has been passed and adopted by the council, it shall pass and adopt a supplemental resolution levying additional assessments against all the property in the district for the purpose of paying the amount awarded and the supplemental resolution shall be made in the same manner and prepared and certified the same as the original resolution levying the assessment to defray the cost of making the improvement.

History: En. Sec. 19, Ch. 89, L. 1913; re-en. Sec. 5243, R.C.M. 1921; re-en. Sec. 5243, R.C.M. 1935; R.C.M. 1947, 11-2225; amd. Sec. 9, Ch. 251, L. 1979.

Cross-References

Rural special improvement district, 7-12-2154.

7-12-4171. Treatment of corner lots for purposes of assessment. For the purposes of special assessments levied against property as provided in this part through part 45, when assessments for improvements on both sides of a corner lot are determined in proportion to the lineal footage, the frontage of a corner lot in a platted block is the average of the two abutting sides.

History: En. 11-2289 by Sec. 1, Ch. 404, L. 1977; R.C.M. 1947, 11-2289.

Cross-References

Rural special improvement district, 7-12-2155.

7-12-4172. Allocation of costs of nonfrontage sides. The governing body shall allocate to all lots in the special improvement district a proportionate share of the costs according to the lineal feet assigned to each lot.

History: En. 11-2290 by Sec. 2, Ch. 404, L. 1977; R.C.M. 1947, 11-2290.

7-12-4173. Status of federal property within improvement district. Whenever any lot, piece, or parcel of land belonging to the United States or mandatory of the government shall front upon the proposed work or improvement or be included within the district declared by the city council in its resolution of intention to be the district to be assessed to pay the costs and expenses thereof, said council shall, in the resolution of intention, declare that said lots, pieces, or parcels of land shall be omitted from the assessment thereafter to be made to cover the costs and expenses of said work or improvement. The cost of said work or improvement in front of said lots, pieces, or parcels of land shall be paid by the city from its general fund.

History: En. Sec. 14, Ch. 89, L. 1913; re-en. Sec. 5238, R.C.M. 1921; amd. Sec. 1, Ch. 163, L. 1925; re-en. Sec. 5238, R.C.M. 1935; amd. Sec. 1, Ch. 39, L. 1955; amd. Sec. 1, Ch. 330, L. 1971; amd. Sec. 1, Ch. 85, L. 1973; R.C.M. 1947, 11-2214(3).

Cross-References

Rural special improvement district, 7-12-2157.

7-12-4174. Inclusion and assessment of unplatted, undedicated, or unsurveyed land in improvement district. Whenever any unplatted, undedicated, or unsurveyed lot, piece, or parcel of land that separates one platted part of the city from another platted part of said city, lying wholly within the boundaries of any city or town and except land owned by the United States, shall abut or border upon any special improvement district or be included within the boundaries of any special improvement district of such city or town, the city of town council may cause the same to be included within and made a part of such special improvement district in the same manner as other property within such special improvement district and may assess the same for its proportionate share of the cost of making or maintaining such improvements in the same manner as other property within such special improvement district.

History: En. Sec. 1, Ch. 16, L. 1923; re-en. Sec. 5238.1, R.C.M. 1935; R.C.M. 1947, 11-2215.

7-12-4175. Offstreet parking option — ordinance setting forth method of assessment required — hearing. (1) Before any improvement district for the establishment or improvement of offstreet parking can be created or financed under 7-12-4165, the city council or commission must, prior to the creation of the district, pass a city ordinance setting forth the formula to be used in determining the assessment of each lot or parcel within the district. The formula must include but is not limited to the items to be considered in 7-12-4165.

(2) Prior to the adoption of any such ordinance, the council or commission shall make a determination of the formula for the method of assessment, considering all of the factors above set forth. A public hearing, after due notice, shall be held wherein concerned persons may present their objections to the formula or any part of it and point out errors and inequities and submit reasons for amendments and corrections. The council may continue the hearing from time to time.

(3) After the council has heard all objections and suggestions, it shall correct any errors which it finds in the formula for assessment as originally made and shall finally establish and settle the formula for assessment in the same manner as any other city ordinance.

History: En. Sec. 14, Ch. 89, L. 1913; re-en. Sec. 5238, R.C.M. 1921; amd. Sec. 1, Ch. 163, L. 1925; re-en. Sec. 5238, R.C.M. 1935; amd. Sec. 1, Ch. 39, L. 1955; amd. Sec. 1, Ch. 330, L. 1971; amd. Sec. 1, Ch. 85, L. 1973; R.C.M. 1947, 11-2214(part); amd. Sec. 34, Ch. 575, L. 1981.

7-12-4176. Resolution for tax levy upon district property. (1) To defray the cost of making or acquiring improvements in any special improvement district or of acquiring property for opening, widening, or extending any street or alley or to defray the cost and expense of changing any grade of any street, avenue, or alley, the city council shall by resolution levy and assess a tax upon all benefited property in any district created for such purpose, using for a basis for assessment the method or methods set forth in 7-12-4161 through 7-12-4165 and described in the resolution of intention.

(2) Such resolutions shall contain a description of each lot and parcel of land, with the name of the owner, if known, the amount of each partial payment to be made, and the day when the same shall become delinquent.

(3) Such resolution, signed by the mayor and clerk, shall be kept on file in the office of the city clerk.

History: (1), (2)En. Sec. 16, Ch. 89, L. 1913; amd. Sec. 7, Ch. 142, L. 1915; re-en. Sec. 5240, R.C.M. 1921; re-en. Sec. 5240, R.C.M. 1935; Sec. 11-2222, R.C.M. 1947; (3)En. Sec. 17, Ch. 89, L. 1913; re-en. Sec. 5241, R.C.M. 1921; re-en. Sec. 5241, R.C.M. 1935; Sec. 11-2223, R.C.M. 1947; R.C.M. 1947, 11-2222(part), 11-2223(part); amd. Sec. 42, Ch. 665, L. 1985.

Cross-References

Rural special improvement district, 7-12-2158.

7-12-4177. Notice of resolution for tax levy — protest and hearing. (1) A notice signed by the city clerk, stating that the resolution levying the special assessment to defray the cost of such improvements is on file in his office and subject to inspection for a period of 10 days, shall be:

(a) published at least once in a newspaper published in the city or town;

(b) mailed to the owner of each lot, tract, or parcel of land to be assessed (such lands must be identified and the mailing address determined from the last completed assessment roll for state, county, and school district taxes); and

(c) mailed to such other persons known to the clerk to have an ownership interest in the property.

(2) Such notice shall state the time and place at which objections to the final adoption of such resolution will be heard by the council. The time for such hearing shall not be less than 10 days after the publication and mailing of such notice.

History: En. Sec. 17, Ch. 89, L. 1913; re-en. Sec. 5241, R.C.M. 1921; re-en. Sec. 5241, R.C.M. 1935; R.C.M. 1947, 11-2223(part); amd. Sec. 43, Ch. 665, L. 1985.

Cross-References

Rural special improvement district, 7-12-2159.

7-12-4178. Hearing on resolution for tax levy. (1) At the time so fixed, the council shall meet and hear all such objections and for that purpose may adjourn from day to day.

(2) The council may by resolution modify such assessment in whole or in part. A copy of such resolution, certified by the city clerk, must be delivered to the city treasurer within 2 days after its passage.

History: En. Sec. 17, Ch. 89, L. 1913; re-en. Sec. 5241, R.C.M. 1921; re-en. Sec. 5241, R.C.M. 1935; R.C.M. 1947, 11-2223(part).

7-12-4179. Payment of maintenance costs — resolution for assessment. (1) The cost of maintaining each of the improvements shall be paid by assessing the benefited properties of the district under a permissible assessment option as provided in 7-12-4162 through 7-12-4165.

(2) It is the duty of the council to estimate, as nearly as practicable, the cost of maintaining the improvements in each district for the season. Before the first Monday in September of each year, the council shall pass and finally adopt a resolution levying and assessing all the property within the several districts with an amount equal to the whole cost of maintaining the improvements within the several districts.

(3) The resolution levying assessments to defray the cost of maintenance of the improvement shall be prepared and certified in the same manner as a resolution levying assessments for making improvements in the special improvement district.

(4) The council may change by resolution, not more than once a year, the boundaries of any maintenance district, but the change of boundaries may not affect indebtedness existing at the time of the change.

History: En. Sec. 18, Ch. 89, L. 1913; re-en. Sec. 5242, R.C.M. 1921; re-en. Sec. 5242, R.C.M. 1935; amd. Sec. 1, Ch. 124, L. 1943; R.C.M. 1947, 11-2224(part); amd. Sec. 10, Ch. 251, L. 1979; amd. Sec. 44, Ch. 665, L. 1985.

Cross-References

Rural special improvement district, 7-12-2161.

7-12-4180. Improvement district maintenance fund. The money collected from the assessment provided for in 7-12-4179 shall be paid into a fund known as special improvement district No. .... maintenance fund, the number of which shall correspond with the number of the special improvement district in which the improvements so maintained are situated.

History: En. Sec. 18, Ch. 89, L. 1913; re-en. Sec. 5242, R.C.M. 1921; re-en. Sec. 5242, R.C.M. 1935; amd. Sec. 1, Ch. 124, L. 1943; R.C.M. 1947, 11-2224(part).

Cross-References

Rural special improvement district, 7-12-2162.

7-12-4181. Collection of district assessments by county clerk — certification. (1) Except as provided in 7-12-4183, in each city or town where taxes for general, municipal, and administrative purposes are certified to and collected by the county treasurer in accordance with the provisions of 7-6-4407 immediately after the second Monday of August of each year, it is the duty of the city treasurer or town clerk to certify, at the same time that the copy of the resolution determining the annual levy for general taxes is certified by the city or town clerk to the county clerk as required by 7-6-4407, to the department of revenue all special assessments and taxes levied and assessed in accordance with any of the provisions of part 42 and this part.

(2) The department of revenue shall enter the special assessments and taxes upon the property tax record for the county. The county treasurer shall collect all taxes and assessments in the same manner and at the same time as taxes for general, municipal, and administrative purposes are collected.

History: En. Sec. 27, Ch. 89, L. 1913; amd. Sec. 1, Ch. 166, L. 1921; re-en. Sec. 5251, R.C.M. 1921; amd. Sec. 1, Ch. 156, L. 1925; amd. Sec. 1, Ch. 78, L. 1929; re-en. Sec. 5251, R.C.M. 1935; amd. Sec. 1, Ch. 13, L. 1945; R.C.M. 1947, 11-2233; amd. Sec. 14, Ch. 27, Sp. L. November 1993.

Cross-References

Rural special improvement district, 7-12-2163.

7-12-4182. Collection of district assessments by city treasurer in cities collecting their own taxes — delinquencies. (1) In every city or town which shall provide by ordinance for the collection of its taxes for general, municipal, and administrative purposes by its city treasurer or town clerk, the city treasurer or town clerk shall collect all special assessments and taxes levied and assessed in accordance with any of the provisions of this part and part 42 in the same manner and at the same time as taxes for general, municipal, and administrative purposes are collected by him. All of the provisions of 7-6-4423 apply to the collection of the special taxes and assessments in the same manner as the provisions apply to the collection of other city or town taxes.

(2) (a) When the payment of an installment of a special assessment becomes delinquent, all payments of subsequent installments may, at the option of the city or town council and upon adoption of the appropriate resolutions, become delinquent. The city or town may, pursuant to 7-12-4184, order that all assessments that are delinquent for specific parcels of land as a result of acceleration be withdrawn.

(b) Upon delinquency in one or all installments, the whole property shall be sold the same as other property is sold for taxes. The enforcement of the lien of any installment of a special assessment by any method authorized by law does not prevent the enforcement of the lien of any subsequent installment when it becomes delinquent.

History: En. Sec. 27, Ch. 89, L. 1913; amd. Sec. 1, Ch. 166, L. 1921; re-en. Sec. 5251, R.C.M. 1921; amd. Sec. 1, Ch. 156, L. 1925; amd. Sec. 1, Ch. 78, L. 1929; re-en. Sec. 5251.1, R.C.M. 1935; R.C.M. 1947, 11-2234; amd. Sec. 3, Ch. 617, L. 1987; amd. Sec. 6, Ch. 449, L. 1989.

7-12-4183. Collection of district assessments by city treasurer in cities where county collects taxes. (1) In any city or town where taxes for general, municipal, and administrative purposes are certified to and collected by the county treasurer in accordance with the provisions of 7-6-4407 and 7-6-4423, the city or town may, nevertheless, provide by ordinance for the collection by its city treasurer or town clerk of all special assessments and taxes levied and assessed in accordance with any of the provisions of this part and part 42 in the same manner and at the same time as taxes for general, municipal, and administrative purposes are collected by the county treasurer. All of the provisions of 7-6-4423 apply to the collection of the special taxes and assessments in the same manner as the provisions apply to the collection of other city or town taxes.

(2) (a) When the payment of any one installment of any special assessment becomes delinquent, all payments of subsequent installments shall, at the option of the city or town council and by appropriate resolution duly adopted, become delinquent. The city or town council may order that all assessments that are delinquent as a result of acceleration be withdrawn.

(b) Delinquent special assessments shall be certified to the county clerk of the county in which the city or town is situated. The county treasurer must collect the delinquent special assessments and taxes in the same manner and at the same time as taxes for general, municipal, and administrative purposes are collected by him. In case they are not paid, the whole property shall be sold in the same manner as other property is sold for taxes. The enforcement of the lien of any installment of a special assessment by any method authorized by law does not prevent the enforcement of the lien of any subsequent installment when it becomes delinquent.

History: En. Subd. (c), Sec. 5251, R.C.M. 1921 by Sec. 1, Ch. 78, L. 1929; re-en. Sec. 5251.2, R.C.M. 1935; R.C.M. 1947, 11-2235; amd. Sec. 4, Ch. 617, L. 1987; amd. Sec. 7, Ch. 449, L. 1989.

7-12-4184. Reinstatement of delinquent assessment. (1) Whenever any special assessment or installment is delinquent, is declared to be delinquent by appropriate resolution of the city or town council, and is certified to the county clerk and county treasurer for collection as provided in this part, the city or town council may, nevertheless, at its option, by appropriate resolution, order the delinquent assessment to be withdrawn from the county treasurer, canceled from the county treasurer's records and proceedings, and reinstated in the office of the city treasurer and on the property tax record upon the payment to the city treasurer of the assessment or the installment and interest up to date.

(2) The certified copy of the resolution of the council with reference to the payment, withdrawal, and reinstatement, filed with the county treasurer, is authority for the county treasurer to cancel and withdraw the delinquent special assessment or installment.

(3) The withdrawal and reinstatement may be made at any time before or after sale of the property for delinquent taxes and before a tax deed is executed.

History: En. Subd. (e), Sec. 5251, R.C.M. 1921 by Sec. 1, Ch. 78, L. 1929; re-en. Sec. 5251.4, R.C.M. 1935; R.C.M. 1947, 11-2237; amd. Sec. 11, Ch. 251, L. 1979; amd. Sec. 15, Ch. 27, Sp. L. November 1993.

7-12-4185. Payment of tax under protest — action to recover. (1) When any tax levied and assessed under any of the provisions of this part and part 42 is deemed unlawful by the party whose property is thus taxed or from whom such tax is demanded, such person may pay such tax or any part thereof deemed unlawful under protest to the city or county treasurer, as the case may be.

(2) Thereupon, such party so paying or his legal representative may bring an action in any court of competent jurisdiction against the officer to whom such tax was paid or against the city in whose behalf the same was collected to

recover such tax or any portion thereof so paid under protest. Any action instituted to recover any tax paid under protest must be commenced within 60 days after the date of payment thereof.

(3) The tax so paid under protest shall be held by the city or county treasurer, as the case may be, until the determination of any action brought for the recovery thereof.

History: En. Sec. 29, Ch. 89, L. 1913; re-en. Sec. 5253, R.C.M. 1921; re-en. Sec. 5253, R.C.M. 1935; R.C.M. 1947, 11-2239.

Cross-References

Rural special improvement district, 7-12-2164.

Taxation — protest payments, Title 15, ch. 1, part 4.

7-12-4186. Procedure to correct assessment and relevy and collect tax. (1) Whenever, by reason of any alleged nonconformity to any law or ordinance or by reason of any omission or irregularity, any special tax or assessment is either invalid or its validity is questioned, the council may make all necessary orders and ordinances and may take all necessary steps to correct the same and to reassess and relevy the same, including the ordering of work, with the same force and effect as if made at the time provided by law, ordinance, or resolution relating thereto. The council may reassess and relevy the same with the same force and effect as an original levy.

(2) Whenever any apportionment or assessment is made and any property is assessed too little or too much, the same may be corrected and reassessed for such additional amount as may be proper or the assessment may be reduced even to the extent of refunding the tax collected.

(3) Any special tax upon reassessment or relevy shall, so far as is practicable, be levied and collected as the same would have been if the first levy had been enforced. Any provisions of any law or ordinance specifying a time when or order in which acts shall be done in a proceeding which may result in a special tax shall be taken to be subject to the qualifications of this part or part 42.

History: En. Sec. 28, Ch. 89, L. 1913; re-en. Sec. 5252, R.C.M. 1921; re-en. Sec. 5252, R.C.M. 1935; R.C.M. 1947, 11-2238(part).

Cross-References

Rural special improvement district, 7-12-2165.

7-12-4187. Certain errors not to invalidate assessments and liens. (1) When, under any of the provisions of this part or part 42, special taxes and assessments are assessed against any lot or parcel of land as the property of a particular person, no misnomer of the owner or supposed owner or other mistake relating to the ownership thereof shall affect such assessment or render it void or voidable.

(2) Any mistake in the description of the property or the name of the owner shall not vitiate any liens created by this part or part 42 unless it is impossible to identify the property from the description.

History: (1)En. Sec. 24, Ch. 89,L. 1913; re-en. Sec. 5248, R.C.M. 1921; re-en. Sec. 5248, R.C.M. 1935; Sec. 11-2230, R.C.M. 1947; (2)En. Sec. 30, Ch. 89, L. 1913; re-en. Sec. 5254, R.C.M. 1921; re-en. Sec. 5254, R.C.M. 1935; Sec. 11-2240, R.C.M. 1947; R.C.M. 1947, 11-2230, 11-2240.

Cross-References

Rural special improvement district, 7-12-2166.

7-12-4188. Due date for district assessments. (1) All special assessments or installments of special assessments in cities and towns, duly and regularly levied by resolution according to law, shall be payable in installments as follows:

(a) one-half of the payment on or before 5 p.m. on November 30 of each year; and

(b) one-half of the payment on or before 5 p.m. on May 31 of the following year.

(2) In the event the same are not paid on or before said dates, the same shall be subject to the same interest and penalties for nonpayment as delinquent property taxes under 15-16-102.

History: En. Subd. (d), Sec. 5251, R.C.M. 1921 by Sec. 1, Ch. 78, L. 1929; re-en. Sec. 5251.3, R.C.M. 1935; R.C.M. 1947, 11-2236; amd. Sec. 1, Ch. 165, L. 1979; amd. Sec. 1, Ch. 527, L. 1981; amd. Sec. 45, Ch. 665, L. 1985.

7-12-4189. Simple interest on assessments. (1) Upon all special assessments and taxes levied and assessed in accordance with any of the provisions of this part, simple interest must be charged at an annual rate equal to the sum of:

(a) 1/2 of 1% a year; plus

(b) the average interest rate payable on the outstanding bonds or warrants of the special improvement district; plus

(c) at the option of the city or town council, up to an additional 1/2 of 1% a year.

(2) The city or town council may subsequently reduce or eliminate the additional interest rate allowed under subsection (1)(c). If the additional interest rate is reduced or eliminated, it may not be subsequently increased or reimposed.

(3) The treasurer, in collecting the special assessment taxes if the taxes are payable in one installment, shall collect the interest as may be shown to be due on the taxes by the resolution levying the assessment. If the assessment is payable in installments, the treasurer shall, at the time of collecting the first installment, collect the interest as may be shown to be due on the assessment by the resolution levying the assessment, and the treasurer shall collect with each subsequent installment interest on the amount remaining unpaid.

History: En. Sec. 21, Ch. 89, L. 1913; re-en. Sec. 5245, R.C.M. 1921; re-en. Sec. 5245, R.C.M. 1935; amd. Sec. 1, Ch. 51, L. 1937; amd. Sec. 16, Ch. 234, L. 1971; R.C.M. 1947, 11-2227; amd. Sec. 46, Ch. 665, L. 1985; amd. Sec. 9, Ch. 229, L. 1995.

Compiler's Comments

1995 Amendment: Chapter 229 in (1) substituted "equal to" for "not exceeding"; inserted (1)(c) concerning additional 1/2 of 1%; inserted (2) concerning reduction or elimination of additional interest rate; and made minor changes in style. Amendment effective March 24, 1995.

Applicability: Section 16, Ch. 229, L. 1995, provided: "[This act] applies to all special improvement districts and rural special improvement districts created after [the effective date of this act] and, at the option of the city, town, or county, to bonds and warrants issued after [the effective date of this act], if the district was created before [the effective date of this act]." Effective March 24, 1995.

7-12-4190. Payment of assessments in installments. (1) The payment of assessments to defray the cost of acquiring or constructing any improvements in special improvement districts may be spread over a term of not to exceed 20 years.

(2) The assessments are payable in equal semiannual installments of principal, with interest on the unpaid installments, or if the city council or commission so prescribes in the resolution authorizing the issuance of special improvement district bonds, in equal semiannual installments of principal and interest, each in the amount required to pay the principal over the term of payment, with interest at the rate then borne by the assessment.

(3) Any assessment that is not delinquent may be prepaid, in whole but not in part, at any time after the assessment is levied, by the payment of the assessment, with interest accrued and to accrue thereon through the next date on which interest on bonds of the special improvement district is payable.

History: En. Sec. 16, Ch. 89, L. 1913; amd. Sec. 7, Ch. 142, L. 1915; re-en. Sec. 5240, R.C.M. 1921; re-en. Sec. 5240, R.C.M. 1935; R.C.M. 1947, 11-2222(part); amd. Sec. 47, Ch. 665, L. 1985; amd. Sec. 3, Ch. 631, L. 1987.

Cross-References

Rural special improvement district, 7-12-2167.

7-12-4191. Assessments and certain other charges as liens. Any special assessment made and levied to defray the cost and expense of any of the work enumerated in this part, together with any percentages imposed for delinquency and for cost of collection, shall constitute a lien upon and against the property upon which such assessment is made and levied from and after the date of the passage of the resolution levying such assessment. The lien can only be extinguished by payment of such assessment with all penalties, costs, and interest.

History: En. Sec. 23, Ch. 89, L. 1913; re-en. Sec. 5247, R.C.M. 1921; re-en. Sec. 5247, R.C.M. 1935; R.C.M. 1947, 11-2229.

Cross-References

Rural special improvement district, 7-12-2168.

7-12-4192. Change in outstanding principal of district — relevy of assessments. If proceeds of the bonds or warrants of the special improvement district, including investment income, are applied to the redemption and prepayment of the bonds or warrants, as provided in 7-12-4205 and 7-12-4206, or if refunding bonds are issued pursuant to 7-12-4194 and the principal amount of the outstanding bonds of the district is decreased or increased, the assessments levied in the district and then outstanding must be reduced or increased, respectively, pro rata by the principal amount of the prepayment or the increment above or below the outstanding principal amount of bonds represented by the refunding bonds. If refunding bonds are issued, the assessments may be relevied over a term ending not later than either the final maturity date of the refunding bonds or the date 30 years after the date the bonds to be refunded were issued. The city council shall reassess and relevy the assessments, with the same effect as an original levy, in reduced or increased amounts in accordance with the provisions of 7-12-4176 through 7-12-4178.

History: En. Sec. 48, Ch. 665, L. 1985; amd. Sec. 8, Ch. 449, L. 1989.

7-12-4193. Pooling of bonds of districts in city. (1) If the city council determines by resolution that the pooling of bonds of more than one special improvement district of the city is in the best interest of the city and the respective districts and will facilitate the sale of the bonds under more advantageous terms or with lower interest rates, the city may issue bonds of the districts combined in a single offering. Such bonds must be secured by the special improvement district revolving fund of the city.

(2) The title of the bonds issued pursuant to this section shall denote that bonds of different special improvement districts have been pooled and shall refer to the numbers of the districts. The bonds must be drawn against a sinking fund that has separate accounts for each special improvement district combined for financing purposes, into which accounts must be payable the assessments levied in each of the districts.

History: **En. Sec. 53, Ch. 665, L. 1985.**

7-12-4194. Refunding bonds. (1) A city may issue special improvement district bonds for the purpose of providing the money needed to pay principal of and interest on outstanding special improvement district bonds. To issue bonds for that purpose, the city council, at a regular meeting or a duly called special meeting, shall adopt a resolution setting forth:

(a) the facts regarding the outstanding bonds that are to be refunded;

(b) the reasons for issuing refunding bonds; and

(c) the term and details of the refunding bonds.

(2) If the refunding bonds are proposed to be issued in an amount greater than the amount of outstanding bonds to be refunded, the city council may not authorize the issuance of the bonds until it has conducted a public hearing on the desirability of issuing the bonds, after published and mailed notice as provided in 7-12-4106(2), and found by resolution that the issuance of refunding bonds is in the best interest of the special improvement district.

(3) After the adoption of the required resolution or resolutions, the council may:

(a) sell the refunding bonds at a private negotiated sale; or

(b) at its option, give notice of the sale and sell the refunding bonds in the same manner that other special improvement district bonds are sold.

(4) Bonds may not be refunded by the issuance of refunding bonds unless:

(a) the rate of interest offered on the refunding bonds is at least 1/2 of 1% a year less than the rate of interest on the bonds to be refunded;

(b) there is, or will be on the next payment date, default in the payment of bond principal or interest; or

(c) 50% or more of the installments of special assessments levied in the special improvement district and payable in a single fiscal year have been delinquent for at least 1 year.

(5) (a) Refunding bonds issued pursuant to this section may be issued to refund outstanding bonds in advance of the date on which the bonds mature or are subject to redemption, but the proceeds of the refunding bonds, less any accrued interest or premium received from their sale, must be deposited with other funds appropriated for the payment of the outstanding bonds in escrow with a suitable banking institution or trust company, which may be located either in or out of the state.

(b) Deposited funds must be invested in securities that are general obligations of the United States or securities the principal of and interest on which are guaranteed by the United States. The securities must mature or be callable at the option of the holder on the dates and bear interest at the rates and be payable on the dates as may be required to provide funds sufficient, with any cash deposited in the escrow account, to pay when due:

(i) the interest to accrue on each refunded bond to its maturity or redemption date, if called for redemption;

(ii) the principal on each refunded bond at maturity or upon the redemption date; and

(iii) any redemption premium.

(c) The escrow account must be irrevocably appropriated to the payment of the principal of an interest and redemption premium, if any, on the refunded bonds.

(d) Funds to the credit of the debt service fund for the payment of the refunded bonds and not required for the payment of principal or interest due prior to issuance of the refunding bonds may be appropriated by the council to the escrow account.

(e) The city may pay the reasonable costs and expenses of printing the refunding bonds and of establishing and maintaining the escrow account.

(6) Refunding bonds may be issued under this section to pay principal of or interest on special improvement district bonds outstanding on April 30, 1985, only if:

(a) the proceeds of the refunding bonds do not redeem the outstanding bonds until one-third or more of the term for which the bonds were issued has expired;

(b) there is a deficiency in the bond account or interest account of the special improvement district fund from which the bonds are payable that will not be satisfied by a loan from the revolving fund; or

(c) 50% or more of the installments of special assessments levied in the special improvement district and payable in a single fiscal year have been delinquent for at least 1 year.

History: En. Sec. 56, Ch. 665, L. 1985; amd. Sec. 4, Ch. 631, L. 1987; amd. Sec. 9, Ch. 449, L. 1989.

Part 42

Special Improvement Districts Continued

7-12-4201. Use of bonds and warrants. All costs and expenses incurred in the acquisition or construction of any improvements specified in part 41 in any improvement district or incurred in the issuance of the bonds or warrants of the district, including incidental expenses, shall be paid for by special improvement district bonds or warrants. The city or town council shall provide for making payments for improvements in any special improvement district by the method provided in 7-12-4204 and 7-12-4205.

History: Ap. p. Sec. 25, Ch. 89, L. 1913; amd. Sec. 8, Ch. 142, L. 1915; re-en. Sec. 5249, R.C.M. 1921; re-en. Sec. 5249, R.C.M. 1935; amd. Sec. 1, Ch. 23, L. 1937; amd. Sec. 1, Ch. 177, L. 1945; amd. Sec. 5, Ch. 260, L. 1959; amd. Sec. 17, Ch. 234, L. 1971; Sec. 11-2231, R.C.M. 1947; Ap. p. Sec. 26, Ch. 89, L. 1913; re-en. Sec. 5250, R.C.M. 1921; amd. Sec. 1, Ch. 46, L. 1927; re-en. Sec. 5250, R.C.M. 1935; amd. Sec. 1, Ch. 178, L. 1945; Sec. 11-2232, R.C.M. 1947; R.C.M. 1947, 11-2231(part), 11-2232(part); amd. Sec. 49, Ch. 665, L. 1985.

Cross-References
Rural special improvement district, 7-12-2169.

7-12-4202. Repealed. Sec. 16, Ch. 449, L. 1989.

History: En. Sec. 25, Ch. 89, L. 1913; amd. Sec. 8, Ch. 142, L. 1915; re-en. Sec. 5249, R.C.M. 1921; re-en. Sec. 5249, R.C.M. 1935; amd. Sec. 1, Ch. 23, L. 1937; amd. Sec. 1, Ch. 177, L. 1945; amd. Sec. 5, Ch. 260, L. 1959; amd. Sec. 17, Ch. 234, L. 1971; R.C.M. 1947, 11-2231(part); amd. Sec. 3, Ch. 165, L. 1979; amd. Sec. 4, Ch. 308, L. 1981; amd. Sec. 2, Ch. 527, L. 1981.

7-12-4203. Details relating to special improvement district bonds and warrants — definitions of bond forms. (1) The bonds and warrants shall be drawn against the special improvement district fund created for the district and shall bear interest from the date of registration until called for redemption or paid in full. The interest shall be payable annually or semiannually, at the discretion of the governing body of the municipality, on the dates the governing body prescribes. The warrants or bonds shall bear the signatures of the mayor and clerk and shall bear the corporate seal of the city. They shall be registered in the office of the clerk and treasurer, and if interest coupons are attached to the warrants or bonds, they shall also be registered and shall bear the signatures of the mayor and clerk.

(2) The bonds shall be in denominations of $100 or fractions or multiples thereof, may be issued in installments, and may extend over a period not to exceed 20 years or, if refunding bonds are issued pursuant to 7-12-4194, over a period ending not later than 30 years after the date the bonds to be refunded were issued. For the purposes of this subsection, the term of a bond issue commences on July 1 of the fiscal year in which the city first levies assessments to pay principal and interest on the bonds.

(3) All special improvement district bonds must be amortization bonds unless, in the judgment of the city council, serial bonds will be more advantageous to the district and can be sold at a comparatively reasonable rate or rates of interest.

(4) As used in part 41 and this part, unless the context clearly indicates otherwise, the following definitions apply:

(a) "Amortization bonds" means the form of bonds on which:

(i) a part of the principal must be paid each time interest becomes payable;

(ii) the part payment of principal increases at each installment in the same amount that the interest decreases;

(iii) the combined interest and principal due on each due date remains the same until the bonds are paid;

(iv) the final payment may vary from prior payments in the amount resulting from disregarding fractional costs in prior payments; and

(v) the initial payment may be larger than subsequent payments if the increase represents interest accrued over an additional period not greater than 6 months.

(b) "Serial bonds" means a bond issue payable in annual installments commencing not more than 2 years from the date of issue, any one installment consisting of one or more bonds, with the principal amount of bonds maturing in each installment not exceeding five times the principal amount of the bonds maturing in the immediately preceding installment.

History: En. Sec. 25, Ch. 89, L. 1913; amd. Sec. 8, Ch. 142, L. 1915; re-en. Sec. 5249, R.C.M. 1921; re-en. Sec. 5249, R.C.M. 1935; amd. Sec. 1, Ch. 23, L. 1937; amd. Sec. 1, Ch. 177, L. 1945; amd. Sec. 5, Ch. 260, L. 1959; amd. Sec. 17, Ch. 234, L. 1971; R.C.M. 1947, 11-2231(part); amd. Sec. 4, Ch. 165, L. 1979; amd. Sec. 3, Ch. 527, L. 1981; amd. Sec. 50, Ch. 665, L. 1985; (4)En. Sec. 51, Ch. 665, L. 1985; amd. Sec. 6, Ch. 256, L. 1989; amd. Sec. 10, Ch. 449, L. 1989.

Cross-References

Rural special improvement district, 7-12-2171.

7-12-4204. Procedure to issue bonds and warrants. (1) The city or town council shall sell bonds or warrants issued under the provisions of 7-12-4201, in an amount sufficient to pay that part of the total cost and expense of the improvements that is to be assessed against benefited property within the district, to the highest and best bidder for cash at a price, including interest to date of delivery, not less than that prescribed by the city council in the resolution calling for the sale of the bonds or warrants. The city council may fix the minimum price for the bonds or warrants in an amount less than face value if it determines that the sale is in the best interests of the district and the city.

(2) The bonds or warrants may be sold at a private negotiated sale to the United States or the state of Montana or to an agency, instrumentality, corporation, or department of the state.

(3) In all other cases, the provisions of 7-7-4251, 7-7-4252, and 7-7-4254 with regard to the notice of sale, publication of notice, and manner and method of selling bonds by cities and towns, insofar as the same are applicable and not in conflict with the provisions of this section and 7-12-4205, apply to, govern, and control the form of notice of sale, publication of notice, and manner and method of selling the bonds or warrants.

History: En. Sec. 26, Ch. 89, L. 1913; re-en. Sec. 5250, R.C.M. 1921; amd. Sec. 1, Ch. 46, L. 1927; re-en. Sec. 5250, R.C.M. 1935; amd. Sec. 1, Ch. 178, L. 1945; R.C.M. 1947, 11-2232(part); amd. Sec. 52, Ch. 665, L. 1985; amd. Sec. 4, Ch. 6, L. 1993.

Cross-References

Rural special improvement district, 7-12-2172.

7-12-4205. Disposition of bond or warrant proceeds. (1) The city or town council shall use the proceeds of such sale in making payment for the cost of the improvements. Payments to contractors may be made either from time to time, on estimates made by the engineer in charge of such improvements for the city or town, or upon the entire completion of the improvements and the acceptance thereof by the city or town council.

(2) During the construction of the improvements, all interest earned on the investment of bond or warrant proceeds must be credited to the construction account of the improvement district fund from which the proceeds were withdrawn.

(3) Any proceeds of the bonds or warrants, including investment income thereon, remaining after payment of all costs of the improvements must be transferred to the sinking fund in the improvement district fund and applied, to the extent possible, to the prepayment and redemption of bonds or warrants on the next succeeding redemption date for which notice of redemption may properly be given.

History: **En. Sec. 26, Ch. 89, L. 1913; re-en. Sec. 5250, R.C.M. 1921; amd. Sec. 1, Ch. 46, L. 1927; re-en. Sec. 5250, R.C.M. 1935; amd. Sec. 1, Ch. 178, L. 1945; R.C.M. 1947, 11-2232(part); amd. Sec. 4, Ch. 382, L. 1983; amd. Sec. 54, Ch. 665, L. 1985.**

Cross-References

Rural special improvement district, 7-12-2173.

7-12-4206. Redemption of bonds and warrants. (1) Special improvement district warrants or bonds must be redeemed on any interest payment date from the proceeds of the bonds or warrants remaining after payment of all costs of the improvements, as provided in 7-12-4205, or from the prepayment of assessments levied in the district. Special improvement district bonds or warrants may be otherwise subject to redemption and prepayment at the option of the city, as provided in the resolution authorizing the issuance of the bonds.

(2) The date of redemption must be fixed by the treasurer and may not be less than 30 days after the date of publication or mailing of the notice, and on the date fixed, interest ceases. The treasurer shall give written notice to the holders of the warrants or bonds to be redeemed, if their addresses are known, of the number of warrants or bonds to be redeemed and the date on which payment will be made. If the addresses of the holders of all bonds or warrants to be redeemed are not known, the treasurer shall publish notice of redemption once in a newspaper published in the city.

History: **En. Sec. 25, Ch. 89, L. 1913; amd. Sec. 8, Ch. 142, L. 1915; re-en. Sec. 5249, R.C.M. 1921; re-en. Sec. 5249, R.C.M. 1935; amd. Sec. 1, Ch. 23, L. 1937; amd. Sec. 1, Ch. 177, L. 1945; amd. Sec. 5, Ch. 260, L. 1959; amd. Sec. 17, Ch. 234, L. 1971; R.C.M. 1947, 11-2231(part); amd. Sec. 12, Ch. 251, L. 1979; amd. Sec. 55, Ch. 665, L. 1985; amd. Sec. 38, Ch. 423, L. 1995.**

Compiler's Comments

1995 Amendment: Chapter 423 at end of (1) substituted "as provided in the resolution authorizing the issuance of the bonds" for "in order of registration, on any interest payment date"; in first sentence of (2) extended redemption date from 10 days after notice to 30 days after notice; and made minor changes in style. Amendment effective April 13, 1995.

Applicability: Section 53, Ch. 423, L. 1995, provided: "[This act] applies to bonds issued under the provisions of [this act] after [the effective date of this act]." Effective April 13, 1995.

Cross-References

Rural special improvement district, 7-12-2174.

7-12-4207. Investment of interest and sinking fund money. (1) The governing body of a city in which a special improvement district is located may invest interest and sinking fund money of the district in time deposits of a bank, savings and loan association, or credit union insured by the federal deposit insurance corporation or by the national credit union administration or invested in direct obligations of the United States government payable within 180 days from the time of investment.

(2) All interest collected on deposits or investments must be credited to the sinking fund from which the money was withdrawn.

History: **En. Sec. 1, Ch. 45, L. 1965; R.C.M. 1947, 11-2288(part); amd. Sec. 3, Ch. 382, L. 1983; amd. Sec. 9, Ch. 421, L. 1985; amd. Sec. 14, Ch. 10, L. 1993.**

Cross-References

Rural special improvement district, 7-12-2175.

7-12-4208 through 7-12-4220 reserved.

7-12-4221. Creation of special improvement district revolving fund. The council or commission of any city or town which has heretofore created or may hereafter create any special improvement district or districts for any purpose may in its discretion create, establish, and maintain by ordinance a fund to be known and designated as the special improvement district revolving fund in order to secure prompt payment of any special improvement district bonds or sidewalk, curb, and alley approach warrants issued in payment of improvements made therein and the interest thereon as it becomes due. Nothing herein shall authorize or permit the elimination of a revolving fund until all bonds and warrants secured thereby and interest thereon have been fully paid and discharged.

History: En. Sec. 1, Ch. 24, L. 1929; re-en. Sec. 5277.1, R.C.M. 1935; amd. Sec. 1, Ch. 255, L. 1971; R.C.M. 1947, 11-2269; amd. Sec. 6, Ch. 422, L. 1983.

Cross-References

Rural special improvement district, 7-12-2181.

7-12-4222. Sources of money for revolving fund. (1) For the purpose of providing funds for the revolving fund, the city or town council:

(a) may, from time to time, transfer to the revolving fund from the general fund of the city or town an amount as may be necessary. The amount transferred is a loan from the general fund to the revolving fund.

(b) shall, if the bonds or warrants are secured by the revolving fund pursuant to 7-12-4225, include in the cost of the improvement to be defrayed from the proceeds of the bonds or warrants an amount equal to 5% of the principal amount of the bonds or warrants as provided in 7-12-4169; and

(c) shall, in addition to a transfer or transfers from the general fund or in lieu of a transfer, levy for the revolving fund a tax, declared to be for a public purpose, on all taxable property in the city or town as is necessary to meet the financial requirements of the revolving fund. A tax may not be levied if the balance in the revolving fund exceeds 5% of the principal amount of the then-outstanding special improvement district bonds and warrants secured by the revolving fund. If a tax is levied, the tax may not be an amount that would increase the balance in the revolving fund above 5% of the then-outstanding special improvement district bonds and warrants secured by the revolving fund.

(2) Whenever there is money in the district fund that is not required for payment of any bond or warrant of the district secured by the revolving fund or of interest on the bond or warrant, as much of the money as may be necessary to pay the loan provided for in 7-12-4223 must, by order of the council, be transferred to the revolving fund. After all the bonds and warrants issued on any special improvement district or sidewalk, curb, and alley approach warrants secured by the revolving fund have been fully paid, all money remaining in the district fund must, by order of the council, be transferred to and become part of the revolving fund.

History: En. Secs. 2, 4, Ch. 24, L. 1929; re-en. Secs. 5277.2, 5277.4, R.C.M. 1935; amd. Secs. 2, 4, Ch. 255, L. 1971; R.C.M. 1947, 11-2270, 11-2272(part); amd. Sec. 5, Ch. 308, L. 1981; amd. Sec. 2, Ch. 435, L. 1981; amd. Sec. 7, Ch. 422, L. 1983; amd. Sec. 10, Ch. 229, L. 1995.

Compiler's Comments

1995 Amendment: Chapter 229 in (1)(b), at beginning, substituted "shall, if the bonds or warrants are secured by the revolving fund pursuant to 7-12-4225" for "may", near middle substituted "equal to 5%" for "up to 5%", and at end substituted "as provided in 7-12-4169" for "and deposit it in the revolving fund upon receipt of such proceeds"; in (1)(c), after "levy", deleted "and collect"; and made minor changes in style. Amendment effective March 24, 1995.

Applicability: Section 16, Ch. 229, L. 1995, provided: "[This act] applies to all special improvement districts and rural special improvement districts created after [the effective date of this act] and, at the option of the city, town, or county, to bonds and warrants issued after [the effective date of this act], if the district was created before [the effective date of this act]." Effective March 24, 1995.

Cross-References

Rural special improvement district, 7-12-2182.

7-12-4223. Loans from revolving fund to meet payments on bonds and warrants. During the period described in 7-12-4225(2), when any special improvement district bond or sidewalk, curb, and alley approach warrants that are secured by the revolving fund or any interest on the bond or warrants becomes due and payable and there is either no money or insufficient money in the appropriate district fund after a transfer from the appropriate district reserve account, if established, with which to pay the bond, warrant, or interest, an amount sufficient to make up the deficiency must be loaned by the revolving fund to the district fund. The bond, warrant, or interest must be paid from the money loaned or from the money loaned and money available in the district fund.

History: En. Sec. 3, Ch. 24, L. 1929; re-en. Sec. 5277.3, R.C.M. 1935; amd. Sec. 1, Ch. 179, L. 1945; amd. Sec. 17, Ch. 158, L. 1971; amd. Sec. 3, Ch. 255, L. 1971; R.C.M. 1947, 11-2271(1); amd. Sec. 8, Ch. 422, L. 1983; amd. Sec. 11, Ch. 229, L. 1995.

Compiler's Comments

1995 Amendment: Chapter 229 at beginning of first sentence inserted "During the period described in 7-12-4225(2)" and near middle, after "fund", inserted "after a transfer from the appropriate district reserve account, if established"; at end of second sentence substituted "and money available in the district fund" for "when added to such insufficient amount, as the case may require"; and made minor changes in style. Amendment effective March 24, 1995.

Applicability: Section 16, Ch. 229, L. 1995, provided: "[This act] applies to all special improvement districts and rural special improvement districts created after [the effective date of this act] and, at the option of the city, town, or county, to bonds and warrants issued after [the effective date of this act], if the district was created before [the effective date of this act]." Effective March 24, 1995.

Cross-References

Rural special improvement district, 7-12-2183.

7-12-4224. Lien arising due to loan from revolving fund. Whenever any loan is made to any special improvement district fund or sidewalk, curb, and alley approach warrants from the revolving fund, the revolving fund shall have a lien therefor on all unpaid assessments and installments of assessments on such district (whether delinquent or not) and on all money thereafter coming into such district fund, to the amount of such loan, together with interest thereon from the time it was made at the rate or percentage borne by the bond or warrant for payment of which, or of interest thereon, such loan was made.

History: En. Sec. 4, Ch. 24, L. 1929; re-en. Sec. 5277.4, R.C.M. 1935; amd. Sec. 4, Ch. 255, L. 1971; R.C.M. 1947, 11-2272(part).

Cross-References

Rural special improvement district, 7-12-2184.

7-12-4225. Covenants to use revolving fund — duration of revolving fund obligation — factors to be considered. (1) In connection with the issuance of special improvement district bonds or sidewalk, curb, and alley approach warrants, the city or town council may undertake and agree:

(a) to make loans or advances from the revolving fund to the district fund involved in amounts sufficient to make good any deficiency in the bond and interest accounts, to the extent that funds are available; and

(b) to provide funds for the revolving fund pursuant to the provisions of 7-12-4222(1) by annually making a tax levy (or, in lieu of the tax levy, a loan from the general fund), subject to the maximum limitations imposed by 7-12-4222(1).

(2) The undertakings and agreements referred to in subsection (1) are binding upon the city or town with respect to the special improvement district bonds or sidewalk, curb, and alley approach warrants until the earlier of:

(a) the date on which all bonds or warrants of the issue and interest on the bonds or warrants have been fully paid or discharged in a bankruptcy case in which the special improvement district is the debtor; or

(b) the date that is the later of:

(i) the final stated maturity date of the bonds or warrants; or

(ii) the date on which all special assessments levied in the district have been either paid or discharged.

(3) The discharge of delinquent special assessments levied with respect to a particular lot or parcel is considered to have occurred upon:

(a) the issuance of a tax deed, as provided in 15-18-214, or, if the county is the recipient of the tax deed, upon the sale, lease, or other disposition of the property by the county as provided in Title 7, chapter 8, part 22, 23, 24, or 25, or other applicable law;

(b) the discharge of the trust pursuant to 15-17-318 or upon the sale or lease of the property under 15-17-319 if the property in the district has been assigned to the city or town under Title 15, chapter 17, part 3; or

(c) payment in full of the allowed secured claim for the special assessments in a bankruptcy case in which the owner of the lot or parcel is the debtor.

(4) Prior to entering into the undertakings and agreements set forth in subsection (1), the city or town council shall take into consideration the following factors, including other circumstances that the city or town council may determine to be material to the public interest of securing the bonds or warrants by the revolving fund:

(a) the estimated market value of the lots, parcels, or tracts included in the district at the time that the district is created in comparison to the estimated market value of the lots, parcels, or tracts after the improvements are made;

(b) the diversity of ownership of property in the district;

(c) the amount of the special assessments proposed to be levied against each lot, parcel, or tract in the district in comparison to the estimated market value of the lot, parcel, or tract after the improvements are made;

(d) the amount of any outstanding special assessments against the property in the district;

(e) the amount of delinquencies in the payment of outstanding special assessments or property taxes levied against property in the district;

(f) the public benefit of the improvements proposed to be financed; and

(g) in the case of a district created to make improvements in a newly platted subdivision:

(i) the prior subdivision development experience and credit rating or credit history of the person developing the land; and

(ii) any contribution by property owners to the costs of the improvements or any security given by property owners to secure payment of special assessments levied in the district.

(5) Any findings or determinations with respect to the factors contained in subsection (4) made by the city or town council in a resolution authorizing the undertakings and agreements or the issuance of bonds or warrants are conclusive evidence that the city or town council has taken into consideration the factors required by subsection (4).

(6) In lieu of the undertakings and agreements set forth in subsection (1), the city or town council may determine in the resolution authorizing the issuance of the bonds or warrants that the revolving fund does not secure the bonds or warrants and that the bonds or warrants are payable solely from the district fund created for the bonds or warrants and do not have a claim against the revolving fund.

History: En. Sec. 3, Ch. 24, L. 1929; re-en. Sec. 5277.3, R.C.M. 1935; amd. Sec. 1, Ch. 179, L. 1945; amd. Sec. 17, Ch. 158, L. 1971; amd. Sec. 3, Ch. 255, L. 1971; R.C.M. 1947, 11-2271(2); amd. Sec. 9, Ch. 422, L. 1983; amd. Sec. 12, Ch. 229, L. 1995.

Compiler's Comments

1995 Amendment: Chapter 229 near middle of (1) substituted "the issuance of" for "any public offering of"; at beginning of (1)(a) substituted "make" for "issue orders annually authorizing"; in (1)(b), after parenthetical, deleted "as the city or town council may so agree to and undertake"; at end of (2) substituted "until the earlier of" for "so offered or any interest thereon remain unpaid"; inserted (2)(a) concerning payment or discharge; inserted (2)(b) concerning maturity or payment or discharge of assessments; inserted (3) concerning discharge of delinquent assessments; inserted (4) concerning factors to be considered; inserted (5) concerning conclusive evidentiary basis of findings; and made minor changes in style. Amendment effective March 24, 1995.

Applicability: Section 16, Ch. 229, L. 1995, provided: "[This act] applies to all special improvement districts and rural special improvement districts created after [the effective date of this act] and, at the option of the city, town, or county, to bonds and warrants issued after [the effective date of this act], if the district was created before [the effective date of this act]." Effective March 24, 1995.

Cross-References

Rural special improvement district, 7-12-2185.

7-12-4226. Investment of surplus reserves. Surplus reserves not needed for immediate use may from time to time be invested in securities of the United States or certificates of deposit approved by the city council. The interest earned from such investments shall be placed to the credit of the revolving fund.

History: En. Sec. 4, Ch. 24, L. 1929; re-en. Sec. 5277.4, R.C.M. 1935; amd. Sec. 4, Ch. 255, L. 1971; R.C.M. 1947, 11-2272(part).

7-12-4227. Utilization of excess money in revolving fund. Whenever there is an amount in the revolving fund in excess of the amount deposited in the revolving fund under 7-12-4169(2) and in excess of 5% of the outstanding special improvement district bonds and warrants and the council considers any part of the excess to be greater than the amount necessary for payment or redemption of maturing bonds or warrants secured thereby or interest thereon, the council may:

(1) by vote of all of its members at a meeting called for that purpose, order the amount of the excess that is greater than the amount necessary for the payment or redemption of maturing bonds or warrants secured thereby or

interest thereon or any part thereof transferred to the general fund of such city or town; or

(2) use the excess that is greater than the amount necessary for the payment or redemption of maturing bonds or warrants secured thereby or interest thereon or any part thereof for the purchase of property at sales for delinquent taxes or assessments, or both, or property which may have been struck off or sold to the county for delinquent taxes or assessments, or both, and against which property there then be any unpaid assessment for special improvements on account whereof there are outstanding special improvement district bonds or warrants of the city or town.

History: En. Sec. 5. Ch. 24, L. 1929; re-en. Sec. 5277.5, R.C.M. 1935; R.C.M. 1947, 11-2273(part); amd. Sec. 6, Ch. 308, L. 1981; amd. Sec. 3, Ch. 435, L. 1981; amd. Sec. 10, Ch. 422, L. 1983.

Cross-References

Rural special improvement district, 7-12-2186.

7-12-4228. Disposition of tax certificates and tax-sale property. (1) The council may sell any tax certificates issued on any sale or sales referred to in 7-12-4227(2). After acquiring title to property referred to in 7-12-4227, the city or town may lease such property, sell the same at public or private sale and make conveyance thereof, or otherwise dispose thereof as the interest of the city or town may require.

(2) All proceeds from such sales of tax certificates and from such leasing, sale, or other disposition of the property shall belong to and be paid into the revolving fund and be subject to transfer in whole or in part to the general fund by the vote of all the members of the council at a meeting called for that purpose as hereinbefore provided.

History: En. Sec. 5. Ch. 24, L. 1929; re-en. Sec. 5277.5, R.C.M. 1935; R.C.M. 1947, 11-2273(part).

7-12-4229. Disposal of funds deposited in revolving fund. Any funds without interest deposited in the revolving fund under 7-12-4169(2) less the amount of any loan to the district fund not repaid may be returned to the owners of record of the property of the district in direct proportion of the original assessment on each piece of property, or as an alternative a municipality may transfer the funds placed in the revolving fund as a result of 7-12-4169(2) to the general fund after the final payment of the district's bonds or warrants is paid.

History: En. Sec. 4, Ch. 435, L. 1981.

7-12-4230 through 7-12-4240 reserved.

7-12-4241. Creation of supplemental revolving fund from parking meter revenue. Subject to the provisions of 7-12-4242, a city or town may create, establish, and maintain a supplemental revolving fund out of the net revenues of parking meters to secure prompt payment of principal of and interest on special improvement district bonds issued under the provisions of 7-12-4241 through 7-12-4258 for improvements undertaken pursuant to this part and part 41 for the following purposes: for paving, repaving, macadamizing, remacadamizing, surfacing, resurfacing, oiling, reoiling, graveling, regraveling, piling, repiling, capping, recapping, grading, or regrading one or more streets, alleys, avenues, or other public places or ways in said city or town and/or constructing therein curbs or gutters or for the opening or widening of any street, avenue, alley, or other public way.

History: **En. Sec. 1, Ch. 260, L. 1947; R.C.M. 1947, 11-2274(part).**

7-12-4242. Application of provisions relating to supplemental revolving fund. The provisions of 7-12-4241 through 7-12-4258 shall not be applicable to any improvement unless the council shall find that 80% or more in area of the total parcels to be assessed for such improvement have been improved by the erection of permanent buildings or structures thereon having a value greater than the value of such parcels without such improvements according to the last assessment roll.

History: **En. Sec. 1, Ch. 260, L. 1947; R.C.M. 1947, 11-2274(part).**

7-12-4243. Procedure to create and maintain supplemental revolving fund. (1) (a) A supplemental revolving fund may be created by ordinance, subject to the approval of a majority of the qualified electors voting upon the question at a general election or a special election held in conjunction with a regular or primary election.

(b) As used in 7-12-4241 through 7-12-4258, "qualified electors" means registered electors of the municipality.

(2) The supplemental revolving fund must be created and maintained solely from the net revenue of parking meters. The ordinance may pledge to the revolving fund all or any part of the net revenue of parking meters owned, leased, rented, or acquired by the city or town. The ordinance must contain any provisions concerning the purchase, control, operation, repair, and maintenance of parking meters, including rates to be charged, and the application of the net revenue from the meters and the management and use of the supplemental revolving fund that the council considers necessary.

History: **En. Sec. 2, Ch. 260, L. 1947; amd. Sec. 8, Ch. 158, L. 1971; R.C.M. 1947, 11-2275; amd. Sec. 41, Ch. 387, L. 1995.**

Compiler's Comments

1995 Amendment: Chapter 387 in (1)(a) inserted "held in conjunction with a regular or primary election"; and made minor changes in style.

7-12-4244. Issuance of bonds based upon supplemental revolving fund — election. (1) At any time after the award of the contract for any of the improvements described in 7-12-4241 and prior to the issuance of bonds or warrants under the provisions of 7-12-4201 and 7-12-4203, the council may by resolution determine that the improvement is of a character that bonds may be issued under 7-12-4241 through 7-12-4258 in lieu of bonds under 7-12-4201 and 7-12-4203, and may submit to the qualified electors of the city or town the question whether the bonds shall be issued.

(2) The proposal to issue bonds may be submitted at the same election as the proposal to create the supplemental revolving fund and must be approved by a majority of the qualified electors voting on the question.

History: **En. Sec. 3, Ch. 260, L. 1947; R.C.M. 1947, 11-2276; amd. Sec. 11, Ch. 449, L. 1989.**

7-12-4245. Resolution for issuance of bonds. (1) Whenever the council has been authorized to issue bonds under 7-12-4241 through 7-12-4258, the council may by resolution determine to issue such bonds and provide for the guaranty thereof by the supplemental revolving fund.

(2) Such resolution shall fix the amount, maturity, and interest rate and provide for the sale of bonds in such manner as the council shall determine.

(3) The resolution providing for the issuance of bonds may also contain such reasonable covenants for the protection of the holders thereof as the council may determine.

History: En. Sec. 4, Ch. 260, L. 1947; amd. Sec. 19, Ch. 234, L. 1971; R.C.M. 1947, 11-2277(part).

7-12-4246. Determination of cost of improvements. The governing body of the municipality in determining the cost of said improvement may include estimated costs of the issuance of said bonds; all engineering, inspection, fiscal, and legal expenses; cost of the parking meters; and interest which it is estimated will accrue during the construction period and for 6 months thereafter on money borrowed or which it is estimated will be borrowed for the special improvements for which bonds are issued.

History: En. Sec. 4, Ch. 260, L. 1947; amd. Sec. 19, Ch. 234, L. 1971; R.C.M. 1947, 11-2277(part).

7-12-4247. Details relating to bonds. (1) The bonds may mature at one time, not exceeding the maximum maturity of the assessments to be levied for the improvement, or may mature in installments at various times during the term of the assessments, but the bonds may not mature later than 10 years from the date of issuance.

(2) The bonds, as the council shall determine, are subject to redemption prior to maturity and may be payable at any suitable bank or trust company either within or without the state of Montana.

(3) The bonds issued under 7-12-4241 through 7-12-4258 shall be in substantially the form provided in 7-12-4201 and 7-12-4203, as modified by the provisions of 7-12-4241 through 7-12-4258.

History: En. Sec. 4, Ch. 260, L. 1947; amd. Sec. 19, Ch. 234, L. 1971; R.C.M. 1947, 11-2277(part); amd. Sec. 12, Ch. 449, L. 1989.

7-12-4248. Operation and use of supplemental revolving fund. (1) Money in the supplemental revolving fund shall first be loaned to the various district funds whose bonds are guaranteed under 7-12-4241 through 7-12-4258 to make up any deficiency in such funds.

(2) In event of any further deficiency in such funds, the money in the revolving fund created under 7-12-4221 through 7-12-4228 may be loaned to make good such deficiency pursuant to the provisions of those sections.

(3) In event that the deficit exceeds the money in the supplemental revolving fund, then the money in the revolving fund may be similarly loaned until the deficiency has been made good.

(4) The authorizing resolution may provide that bonds shall become due in accordance with a plan of redemption prior to the stated maturity date. Both revolving funds shall thereafter have concurrent liens on the unpaid assessments and the moneys in the improvement district fund for all such advances, provided that such advances shall not be returned so long as any principal or interest on bonds issued under 7-12-4241 through 7-12-4258 remains unpaid.

History: En. Sec. 5, Ch. 260, L. 1947; R.C.M. 1947, 11-2278(part).

7-12-4249. Meaning of term deficiency. A deficiency shall exist in any district fund whenever principal and interest is due and there is no money in the fund to pay the same.

History: **En. Sec. 5, Ch. 260, L. 1947; R.C.M. 1947, 11-2278(part).**

7-12-4250. Obligations of municipalities to bondholders. All agreements, conditions, covenants, or restrictions in the ordinance creating the supplemental revolving fund, in the resolution determining that the improvement is of a character for which bonds may be issued under 7-12-4241 through 7-12-4258, and in the resolution authorizing the issuance of bonds shall be binding upon the city or town and may not be thereafter altered or amended to the detriment of the rights of any bondholder so long as any of such bonds are outstanding.

History: **En. Sec. 6, Ch. 260, L. 1947; R.C.M. 1947, 11-2279(part).**

7-12-4251. Enforcement of bondholders' rights. The provisions of 7-12-4241 through 7-12-4258 and the rights granted under any ordinance or resolution enacted pursuant to these sections may be enforced by any bondholder by mandamus or other appropriate suit, action, or proceeding in any court of competent jurisdiction.

History: **En. Sec. 6, Ch. 260, L. 1947; R.C.M. 1947, 11-2279(part).**

7-12-4252. Judicial determination of validity of proceedings — petition. (1) Within 10 days after the adoption of the resolution providing for the issuance of bonds under 7-12-4241 through 7-12-4258, the council may file a petition in the district court of the judicial district wherein said city or town is located to determine the validity of the proceedings theretofore had relative to the issuance of said bonds, the creation of the supplemental revolving fund, and the levy of a special assessment.

(2) The petition shall set forth generally the facts in reference to the improvement, the creation of the supplemental revolving fund, and the issuance of bonds and shall have as exhibits thereto certified copies of the ordinances and resolutions and shall pray for confirmation of the proceedings and of the bond issue and the special assessments, if theretofore levied.

History: **En. Sec. 7, Ch. 260, L. 1947; R.C.M. 1947, 11-2280(part).**

7-12-4253. Nature of court proceedings. The action provided for in 7-12-4252 shall be in the nature of a proceeding in rem, and jurisdiction of all parties interested shall be had by notice given as provided in 7-12-4254.

History: **En. Sec. 7, Ch. 260, L. 1947; R.C.M. 1947, 11-2280(part).**

7-12-4254. Hearing on petition — notice. (1) Upon the filing of said petition, the district court or any judge thereof shall fix the time for hearing on said petition, which shall not be less than 15 days from the date of filing the petition in said court.

(2) The district court or any judge thereof shall order the clerk of the court to give notice of the filing of said petition and the date of hearing thereon by publication at least once a week for 2 calendar weeks in a newspaper published or of general circulation in the county where the city or town is situated and also by posting a written or printed copy thereof in at least three public places in each voting precinct of said city or town, the date of first publication and posting to be not less than 15 days prior to the date fixed for hearing.

History: **En. Sec. 7, Ch. 260, L. 1947; R.C.M. 1947, 11-2280(part).**

7-12-4255. Contents of notice of hearing — protest. (1) The notice shall state the substance of the petition and the time and place for hearing and that any interested person or any person whose rights may be affected by the issuance or sale of the bonds or the levy of the special assessment, may, on or before the day fixed for the hearing on the petition, answer the petition and may appear at the hearing and contest the granting of the prayer of the petition and the entry of any order of confirmation pursuant thereto.

(2) Any person eligible to appear may enter his appearance in the proceedings and answer the petition and contest the granting of the prayer of the petition, and all provisions of the code of civil procedure shall be applicable to the proceedings.

History: En. Sec. 7, Ch. 260, L. 1947; R.C.M. 1947, 11-2280(part); amd. Sec. 13, Ch. 251, L. 1979.

7-12-4256. Decision of district court. (1) If upon the hearing the court shall find and determine that the requirements of 7-12-4241 through 7-12-4258 have been complied with and notice of the hearing duly given as required by law, it shall have power to examine and determine the regularity, legality, and validity of the proceedings relative to the issuance of the bonds and the levy of special assessments and the legality and validity of the bonds and the special assessment and may ratify, approve, and confirm the proceedings in whole or in part and enter its judgment or decree accordingly.

(2) If no appeal pursuant to 7-12-4257 is taken within the time provided for in 7-12-4257 or if the judgment or decree of the district court be affirmed upon such appeal, such judgment or decree shall be forever conclusive upon all the world as to the validity of the bonds and the special assessment, and the same shall never be called into question in any court of the state.

History: En. Sec. 7, Ch. 260, L. 1947; R.C.M. 1947, 11-2280(part).

7-12-4257. Appeal from district court to supreme court. From any judgment or decree entered under 7-12-4256, an appeal may be taken to the supreme court at any time within 10 days from the entry of such judgment in the manner prescribed by the code of civil procedure governing appeals from the district court to the supreme court.

History: En. Sec. 7, Ch. 260, L. 1947; R.C.M. 1947, 11-2280(part).

7-12-4258. Cost of court proceedings. The cost of the court proceedings may be apportioned between the parties at the discretion of the court.

History: En. Sec. 7, Ch. 260, L. 1947; R.C.M. 1947, 11-2280(part); amd. Sec. 14, Ch. 251, L. 1979.

Part 43

Special Provisions for Special Improvement Lighting Districts

7-12-4301. Special improvement districts for lighting streets authorized. (1) The council of any city or town is authorized to:

(a) create special improvement districts embracing any street or streets or public highway therein or portions thereof and property adjacent thereto or property which may be declared by said council to be benefited by the improvement to be made for the purpose of lighting such street or streets or public highway;

(b) require that all or any portion of the cost of installing and maintaining such lighting system be paid by the owners of the property embraced within the boundaries of such districts; and

(c) assess and collect such portion of such cost by special assessment against said property.

(2) The governing body may create special lighting districts on any street or streets or public highway for the purpose of lighting them and assess the costs for installation and maintenance to property abutting thereto and collect the costs by special assessment against the property.

History: **(1)En. Sec. 1, Ch. 143, L. 1915; re-en. Sec. 5259, R.C.M. 1921; amd. Sec. 1, Ch. 143, L. 1927; re-en. Sec. 5259, R.C.M. 1935; Sec. 11-2245, R.C.M. 1947; (2)En. Sec. 1, Ch. 89, L. 1913; re-en. Sec. 5225, R.C.M. 1921; re-en. Sec. 5225, R.C.M. 1935; amd. Sec. 1, Ch. 136, L. 1967; amd. Ch. 280, L. 1971; amd. Sec. 28, Ch. 566, L. 1977; Sec. 11-2201, R.C.M. 1947; R.C.M. 1947, 11-2201(8), 11-2245; amd. Sec. 1, Ch. 521, L. 1981.**

Cross-References

Major modification of existing lighting district, 7-12-4351.

7-12-4302. Resolution of intention to create special improvement lighting district. (1) Before creating any special improvement lighting district in any such city or town for the purpose of lighting any street or streets or public highway or section thereof in accordance with the provisions of this part, the city council shall pass a resolution of intention to do so.

(2) The resolution shall designate the number of such district, describe the boundaries thereof, and state therein the general character of the improvement or improvements to be made and an approximate estimate of the cost thereof, an approximate estimate of the cost of maintaining such lights and supplying electrical current therefor for the first year, and the proportion of such cost to be assessed against the property embraced within the district.

History: **En. Sec. 3, Ch. 143, L. 1915; re-en. Sec. 5261, R.C.M. 1921; amd. Sec. 3, Ch. 143, L. 1927; re-en. Sec. 5261, R.C.M. 1935; R.C.M. 1947, 11-2247(1).**

7-12-4303. Notice of resolution of intent to create lighting district. (1) Upon having passed the resolution required by 7-12-4302, the council must give notice of the passage of such resolution of intention. The notice of the passage of such resolution must be published for 5 days in a daily newspaper or in some one issue of a weekly newspaper in the city or town or, in case no newspaper be published in such city or town, then by posting for 5 days in three public places in the city or town. A copy of such notice shall be mailed to every person, firm, or corporation having property within the proposed district, at his last-known address, upon the same day such notice is first published or posted.

(2) Such notice must describe the general character of the improvement so proposed to be made, state the estimated cost thereof and the estimated cost of maintaining the lights and supplying the electrical current therefor within such district for the first year, and designate the time when and the place where the council will hear and pass upon all protests that may be made against the making of such improvement or the creation of such district. Such notice shall refer to the resolution on file in the office of the city clerk for a description of the boundaries.

History: **En. Sec. 3, Ch. 143, L. 1915; re-en. Sec. 5261, R.C.M. 1921; amd. Sec. 3, Ch. 143, L. 1927; re-en. Sec. 5261, R.C.M. 1935; R.C.M. 1947, 11-2247(2).**

7-12-4304. Protest against creation of lighting district. At any time within 15 days after the date of the first publication of the notice of passage of the resolution of intention, any owner of property liable to be assessed for said work may make written protest against the proposed work or against the extent or creation of the district to be assessed, or both. Such notice must be in writing and be delivered to the clerk of the city council, who shall endorse thereon the date of its receipt by him.

History: **En. Sec. 3, Ch. 143, L. 1915; re-en. Sec. 5261, R.C.M. 1921; amd. Sec. 3, Ch. 143, L. 1927; re-en. Sec. 5261, R.C.M. 1935; R.C.M. 1947, 11-2247(3).**

7-12-4305. Consideration of protest. (1) At the next regular meeting of the city council after the expiration of the time within which said protests may be made, the city council shall proceed to hear and pass upon all protests so made, and its decision shall be final and conclusive. When the protest is against the proposed work and the cost thereof is to be assessed upon property embraced within the boundaries of the district and if the city council finds that such protest is made by the owners of a majority of the property embraced within the district to be assessed for the proposed work, no further proceedings shall be taken for a period of 6 months from the date when said protest was received by the city clerk of said city council.

(2) In determining the sufficiency of protest, each protest shall be weighted in proportion to the amount of the assessment to be levied against the lot or parcel with respect to which it is made.

(3) In determining whether or not sufficient protest has been filed in a proposed district to prevent further proceedings therein, property owned by a county, city, or town shall be considered the same as other property in the district.

(4) The city council may adjourn said hearing from time to time.

History: **En. Sec. 3, Ch. 143, L. 1915; re-en. Sec. 5261, R.C.M. 1921; amd. Sec. 3, Ch. 143, L. 1927; re-en. Sec. 5261, R.C.M. 1935; R.C.M. 1947, 11-2247(4), (5); amd. Sec. 2, Ch. 682, L. 1983.**

7-12-4306. Resolution to create lighting district. When no protests have been delivered to the clerk of the city council within 15 days after the date of the first publication of the notice of the passage of the resolution of intention or when a protest shall have been found by the city council to be insufficient or shall have been overruled or when a protest against the extent of the proposed district shall have been heard and denied, immediately thereupon, the city council shall be deemed to have acquired jurisdiction to order the proposed improvements. Before ordering any of said proposed improvements, the city council shall pass a resolution creating the special improvement lighting district in accordance with the resolution of intention theretofore introduced and passed by the city council.

History: **En. Sec. 3, Ch. 143, L. 1915; re-en. Sec. 5261, R.C.M. 1921; amd. Sec. 3, Ch. 143, L. 1927; re-en. Sec. 5261, R.C.M. 1935; R.C.M. 1947, 11-2247(6).**

7-12-4307. Objections to irregular proceedings or manner of making improvements. (1) At any time within 60 days from the date of the award of any contract by a city or town council under the provisions of this part or at any time within 60 days from the date the council requires or instructs the street commissioner or any other official of the city or town to cause the posts, wires, pipes, conduits, lamps, or other suitable and necessary appliances for the purpose of lighting said streets of said city or town to be procured and erected, any owner or other person having any interest in any lot or land liable to assessment who claims that any of the previous acts or proceedings relating to said improvements are irregular, defective, erroneous, or faulty or that his property will be damaged by the making of any improvements in the manner contemplated may file with the city clerk a written notice specifying in what respect said acts or proceedings are irregular, defective, erroneous, or faulty or in what manner and to what extent his property will be damaged by the making of said improvements. The city clerk shall deliver the notice to the council.

(2) All objections to any act or proceeding or in relation to the making of said improvements not made in writing and in the manner at the time aforesaid and all claims for damage therefor shall be waived by such property owners, provided the notice of the passage of the resolution of intention has been actually published and the notices of improvements posted as provided in this part.

History: En. Sec. 3(a), Ch. 243, L. 1921; re-en. Sec. 5262, R.C.M. 1921; re-en. Sec. 5262, R.C.M. 1935; R.C.M. 1947, 11-2248.

7-12-4308. Operation of district. (1) The city or town council may:

(a) cause the posts, wires, pipes, conduits, lamps, or other suitable and necessary appliances for the purpose of lighting said streets to be procured and erected by contract, by the street commissioner, or by any other official of the city or town, in such way and manner as the council shall provide; and

(b) after such lighting system has been installed in such way and manner as the council shall elect, cause, by contract, the lights to be maintained thereon and electrical current furnished therefor.

(2) The posts in any such district shall be of uniform size and character and shall be distributed uniformly upon the street or streets or public highway or section thereof to be lighted in any such district.

(3) The lights in each district shall be maintained by contract for such period of time and in such way or manner as the city or town council shall elect. The council shall not let a contract for a period to exceed 3 years.

History: (1), (2)En. Sec. 3, Ch. 143, L. 1915; re-en. Sec. 5261, R.C.M. 1921; amd. Sec. 3, Ch. 143, L. 1927; re-en. Sec. 5261, R.C.M. 1935; Sec. 11-2247, R.C.M. 1947; (3)En. Sec. 7, Ch. 143, L. 1915; re-en. Sec. 5266, R.C.M. 1921; amd. Sec. 1, Ch. 17, L. 1923; amd. Sec. 7, Ch. 143, L. 1927; re-en. Sec. 5266, R.C.M. 1935; amd. Sec. 1, Ch. 162, L. 1943; Sec. 11-2252, R.C.M. 1947; R.C.M. 1947, 11-2247(7), 11-2252(part).

7-12-4309. Record of expenses to be kept by city engineer. It shall be the duty of the city engineer to keep an account of all costs and expenses incurred in his office in connection with every special improvement district and certify the same to the city clerk.

History: En. Sec. 5, Ch. 143, L. 1915; re-en. Sec. 5264, R.C.M. 1921; re-en. Sec. 5264, R.C.M. 1935; R.C.M. 1947, 11-2250(part).

7-12-4310. Role of city clerk. It shall be the duty of the city clerk to prepare all necessary schedules and resolutions levying taxes and assessments in such special improvement districts.

History: En. Sec. 5, Ch. 143, L. 1915; re-en. Sec. 5264, R.C.M. 1921; re-en. Sec. 5264, R.C.M. 1935; R.C.M. 1947, 11-2250(part).

7-12-4311. Termination of special improvement lighting district. If at any time after the creation of any special improvement lighting district, a petition shall be presented to the city or town council, signed by the owners or agents of more than three-fourths of the total amount of property embraced within the district, asking that the maintenance and operation of such special lighting system and the furnishing of electrical current therefor in such district be discontinued, the city or town council shall by resolution, provide for discontinuing the maintenance and operation of the lighting system. If the council shall have, prior to the presentation of such petition, entered into any contract for the maintenance and operation of such lighting system, such maintenance and operation shall not be discontinued until after the expiration of the contract.

History: En. Sec. 10, Ch. 143, L. 1915; re-en. Sec. 5269, R.C.M. 1921; amd. Sec. 5, Ch. 143, L. 1927; re-en. Sec. 5269, R.C.M. 1935; R.C.M. 1947, 11-2255.

7-12-4312 through 7-12-4320 reserved.

7-12-4321. Apportionment of costs. The portion of the entire cost of erecting and maintaining the posts, wires, pipes, conduits, lamps, and other suitable or necessary appliances for the purpose of lighting said streets or public highways and of the annual cost of supplying electrical current for and maintaining the lights thereon in such districts, all or any portion as shall be determined by the city or town council, shall be borne by the property embraced within said district.

History: En. Sec. 2, Ch. 143, L. 1915; re-en. Sec. 5260, R.C.M. 1921; amd. Sec. 2, Ch. 143, L. 1927; re-en. Sec. 5260, R.C.M. 1935; R.C.M. 1947, 11-2246(part); amd. Sec. 2, Ch. 521, L. 1981.

7-12-4322. Choice in manner of making assessments. The city or town council, for the purpose of making the assessment, shall adopt one of the methods specified in 7-12-4323 or 7-12-4324.

History: En. Sec. 2, Ch. 143, L. 1915; re-en. Sec. 5260, R.C.M. 1921; amd. Sec. 2, Ch. 143, L. 1927; re-en. Sec. 5260, R.C.M. 1935; R.C.M. 1947, 11-2246(part).

7-12-4323. Assessment of costs — area or taxable valuation option. (1) The city council may assess the entire cost of such improvement against the entire district, each lot or parcel of land within such district to be assessed for that part of the whole cost which its:

(a) area bears to the area of the entire district, exclusive of streets, avenues, alleys, and public places; or

(b) taxable valuation, including improvements, bears to the taxable valuation of the entire district.

(2) The council, in its discretion, shall have the power to pay the whole or any part of the cost of any street, avenue, or alley intersection out of any funds in its hands available for that purpose or to include the whole or any part of such costs within the amount of the assessment to be paid by the property in the district.

(3) In order to apportion the cost of any of the improvements provided in this part between the corner lot and the inside lots of any block, the council may, in the resolution creating any district, provide that whenever any of the improvements provided in this part shall be along any side street or bordering or abutting upon the side of any corner lot of any block, the amount of the assessment against the property in such district to defray the cost of such improvements shall be so assessed that each square foot of the land embraced

within any such corner lot shall bear double the amount of the cost of such improvement that a square foot of any inside lot shall bear.

History: En. Sec. 2, Ch. 143, L. 1915; re-en. Sec. 5260, R.C.M. 1921; amd. Sec. 2, Ch. 143, L. 1927; re-en. Sec. 5260, R.C.M. 1935; R.C.M. 1947, 11-2246(a); amd. Sec. 1, Ch. 682, L. 1983.

7-12-4324. Assessment of costs — frontage option. (1) The city council shall assess the cost of the improvements against the entire district, each lot or parcel of land within the district bordering or abutting upon the streets whereon or wherein the improvement has been made to bear costs in proportion to the lineal feet abutting or bordering the streets.

(2) The council, in its discretion, may pay the whole or any part of the cost of any street, avenue, or alley intersection out of any funds in its hands available for that purpose or include the whole or any part of such costs within the amount of the assessment to be paid by the property in the district.

History: En. Sec. 2, Ch. 143, L. 1915; re-en. Sec. 5260, R.C.M. 1921; amd. Sec. 2, Ch. 143, L. 1927; re-en. Sec. 5260, R.C.M. 1935; R.C.M. 1947, 11-2246(b); amd. Sec. 15, Ch. 251, L. 1979.

7-12-4325. Incidental expenses considered as costs of improvements. The cost and expense connected with and incidental to the formation of any such district, including the cost of preparation of plans, specifications, maps, and plats; engineering, superintendence, and inspection (including the compensation of the city engineer for work done by him); the cost of printing and advertising as provided in this part; and the preparation of assessment rolls shall be considered a part of the cost and expenses of making the improvements within such special improvement district.

History: En. Sec. 5, Ch. 143, L. 1915; re-en. Sec. 5264, R.C.M. 1921; re-en. Sec. 5264, R.C.M. 1935; R.C.M. 1947, 11-2250(part).

7-12-4326. Treatment of federal lands within lighting district. Whenever any lot, piece, or parcel of land belonging to the United States (or mandatory of the government) shall be included within the boundaries of the proposed special improvement lighting district declared by the city or town council in its resolution of intention to be the district to be assessed to pay the costs and expenses thereof, said council shall, in the resolution of intention, declare that said lots, pieces, or parcels of land shall be omitted from the assessment thereafter to be made to cover the costs and expenses of said work or improvement. The cost of said work or improvement which would have been assessed against said lots shall be paid by the city from its general fund.

History: En. Sec. 12, Ch. 143, L. 1915; re-en. Sec. 5271, R.C.M. 1921; amd. Sec. 6, Ch. 143, L. 1927; re-en. Sec. 5271, R.C.M. 1935; R.C.M. 1947, 11-2257.

7-12-4327. Assessment of costs of lighting district to certain lands lying outside of municipality. The city or town council may make assessments in the manner provided in 7-12-4301 on property abutting the street or highway and lying outside the boundaries of the city or town, as long as that portion of the street or public highway to be lighted is adjacent to the boundary line of the city or town, lies partially within the city or town, or extends from one point within the city or town to another point within the city or town.

History: En. Sec. 1, Ch. 89, L. 1913; re-en. Sec. 5225, R.C.M. 1921; re-en. Sec. 5225, R.C.M. 1935; amd. Sec. 1, Ch. 136, L. 1967; amd. Ch. 280, L. 1971; amd. Sec. 28, Ch. 566, L. 1977; R.C.M. 1947, 11-2201(9).

7-12-4328. Resolution to provide for assessment of costs of installation. (1) It shall be the duty of the city or town council to ascertain the cost of installing such lighting system and, on or before the first Monday in October, to pass and finally adopt a resolution levying and assessing all of the property embraced within said district with all or any portion of the entire cost of installing the same; each lot or parcel of land in said district to be assessed in accordance with the method adopted by the city council as provided in 7-12-4321 through 7-12-4324.

(2) Any such resolution shall contain a list in which shall be described each lot or parcel of land, either the total number of square feet of property contained therein or the total number of linear feet abutting the improvements as may be required to determine the total assessment in the district, and the amount levied against each lot or parcel of land set opposite.

(3) Such resolution, signed by the mayor and city clerk, shall be kept on file in the office of the city clerk.

History: En. Sec. 6, Ch. 143, L. 1915; re-en. Sec. 5265, R.C.M. 1921; amd. Sec. 4, Ch. 143, L. 1927; amd. Sec. 1, Ch. 26, L. 1929; re-en. Sec. 5265, R.C.M. 1935; R.C.M. 1947, 11-2251(part); amd. Sec. 3, Ch. 521, L. 1981.

7-12-4329. Notice of resolution for assessment of installation costs — hearing on resolution. (1) A notice, signed by the city clerk, stating that the resolution levying the assessment to defray the portion of the cost of installing and maintaining said lights and supplying electrical current therefor for the first year as determined by the city or town council is on file in his office subject to inspection for a period of 5 days shall be published at least once in a newspaper published in the city.

(2) Such notice shall state the time and place at which objections to the final adoption of such resolution shall be heard by the council. The time for such hearing shall not be less than 5 days after the publication of such notice.

History: En. Sec. 6, Ch. 143, L. 1915; re-en. Sec. 5265, R.C.M. 1921; amd. Sec. 4, Ch. 143, L. 1927; amd. Sec. 1, Ch. 26, L. 1929; re-en. Sec. 5265, R.C.M. 1935; R.C.M. 1947, 11-2251(part).

7-12-4330. Hearing on resolution for assessment of installation costs. (1) At the time so fixed, the council shall meet and hear all such objections and for the purpose may adjourn from day to day and may modify such resolution in whole or in part.

(2) A copy of such resolution as finally adopted, certified by the city clerk, must be delivered within 2 days after its passage to the city treasurer.

History: En. Sec. 6, Ch. 143, L. 1915; re-en. Sec. 5265, R.C.M. 1921; amd. Sec. 4, Ch. 143, L. 1927; amd. Sec. 1, Ch. 26, L. 1929; re-en. Sec. 5265, R.C.M. 1935; R.C.M. 1947, 11-2251(part).

7-12-4331. Lighting district fund established. All money derived from the collection of the assessments provided for in 7-12-4328 through 7-12-4330 shall constitute a fund to be known as the special improvement lighting district No. .... fund.

History: En. Sec. 6, Ch. 143, L. 1915; re-en. Sec. 5265, R.C.M. 1921; amd. Sec. 4, Ch. 143, L. 1927; amd. Sec. 1, Ch. 26, L. 1929; re-en. Sec. 5265, R.C.M. 1935; R.C.M. 1947, 11-2251(part).

7-12-4332. Resolution to provide for assessment of maintenance costs. It shall be the duty of the city or town council to estimate, as nearly as practicable, the cost of maintaining such lights and furnishing electrical current therefor each year and the portion thereof to be assessed against the property embraced within the district and, before the first Monday in October, to pass and finally adopt a resolution levying and assessing said property within said district with an amount equal to the proportion of the cost of such maintenance and electrical current so determined to be especially assessed against said property.

History: En. Sec. 7, Ch. 143, L. 1915; re-en. Sec. 5266, R.C.M. 1921; amd. Sec. 1, Ch. 17, L. 1923; amd. Sec. 7, Ch. 143, L. 1927; re-en. Sec. 5266, R.C.M. 1935; amd. Sec. 1, Ch. 162, L. 1943; R.C.M. 1947, 11-2252(part).

7-12-4333. Procedure for resolution for assessment of maintenance costs. Said resolution levying and assessing said portion of the cost of maintenance and for furnishing electrical current therefor shall be prepared and certified to in the same manner as the resolution provided for in 7-12-4328 through 7-12-4330, and the same notice and hearing shall be given thereon. This resolution shall be adopted and certified and the assessment collected in the same manner, as nearly as may be, in the case of the resolution provided for in 7-12-4328 through 7-12-4331.

History: En. Sec. 7, Ch. 143, L. 1915; re-en. Sec. 5266, R.C.M. 1921; amd. Sec. 1, Ch. 17, L. 1923; amd. Sec. 7, Ch. 143, L. 1927; re-en. Sec. 5266, R.C.M. 1935; amd. Sec. 1, Ch. 162, L. 1943; R.C.M. 1947, 11-2252(part).

7-12-4334. Lighting district maintenance fund. All money derived from the collection of the assessment provided for in the resolution required by 7-12-4333 shall be paid into a fund known as the special improvement lighting district No. .... maintenance fund, the number of which shall correspond with the number of the lighting district, for the maintenance of and the supplying of current for which the tax is levied. Such fund shall be used to defray the expense of maintaining and furnishing electrical current for the lights in said district and for no other purpose.

History: En. Sec. 7, Ch. 143, L. 1915; re-en. Sec. 5266, R.C.M. 1921; amd. Sec. 1, Ch. 17, L. 1923; amd. Sec. 7, Ch. 143, L. 1927; re-en. Sec. 5266, R.C.M. 1935; amd. Sec. 1, Ch. 162, L. 1943; R.C.M. 1947, 11-2252(part).

7-12-4335. Change of boundaries of maintenance district. The city or town council shall have the power, not more than once in a year, to change by resolution the boundaries and number of any maintenance district, but such change of boundaries shall not affect indebtedness existing at the time of such change.

History: En. Sec. 7, Ch. 143, L. 1915; re-en. Sec. 5266, R.C.M. 1921; amd. Sec. 1, Ch. 17, L. 1923; amd. Sec. 7, Ch. 143, L. 1927; re-en. Sec. 5266, R.C.M. 1935; amd. Sec. 1, Ch. 162, L. 1943; R.C.M. 1947, 11-2252(part).

7-12-4336. Effect of mistake as to property ownership. When, under any of the provisions of this part, special taxes and assessments are assessed against any lot or parcel of land as the property of a particular person, no misnomer of the owner or supposed owner or other mistake relating to the ownership thereof shall affect such assessment or render it void or voidable.

History: En. Sec. 8, Ch. 143, L. 1915; re-en. Sec. 5267, R.C.M. 1921; re-en. Sec. 5267, R.C.M. 1935; R.C.M. 1947, 11-2253.

7-12-4337. Incorporation of procedures to correct errors and omissions. All remedies, provisions, and means provided by existing laws or by the ordinances of any city availing itself of the provisions of this part which are for the correction of errors or omissions in the adoption of any resolution or proceeding or in the levy of any assessment or for the collection thereof, for the enforcement of any such levy by the sale of the property against which the assessment is made, or for the redemption of the property from such sale or which are otherwise applicable to the administration of this part are available in the administration of this part as if such remedies, provisions, and means were contained in this part.

History: En. Sec. 9, Ch. 143, L. 1915; re-en. Sec. 5268, R.C.M. 1921; re-en. Sec. 5268, R.C.M. 1935; R.C.M. 1947, 11-2254; amd. Sec. 16, Ch. 251, L. 1979.

7-12-4338. Assessments to have effect of lien. Any special assessment levied and made for any purpose aforesaid, together with all costs and penalties, shall constitute a lien upon and against the property upon which assessment is made and levied from and after the date of the final passage and adoption of the resolution levying the same. The lien can only be extinguished by payment of such assessment, with all penalties, costs, and interest, or otherwise as provided by law.

History: En. Sec. 7, Ch. 143, L. 1915; re-en. Sec. 5266, R.C.M. 1921; amd. Sec. 1, Ch. 17, L. 1923; amd. Sec. 7, Ch. 143, L. 1927; re-en. Sec. 5266, R.C.M. 1935; amd. Sec. 1, Ch. 162, L. 1943; R.C.M. 1947, 11-2252(3).

Cross-References

Liens, Title 71, ch. 3, part 1.

7-12-4339 and 7-12-4340 reserved.

7-12-4341. Financing of lighting district improvements. All costs and expenses incurred in the construction of the improvements specified in this part shall be paid for by special improvement lighting district bonds or warrants, in such form as may be prescribed by ordinance, drawn against a fund to be known as the special improvement lighting district No. .... fund.

History: En. Sec. 4, Ch. 143, L. 1915; re-en. Sec. 5263, R.C.M. 1921; re-en. Sec. 5263, R.C.M. 1935; amd. Sec. 1, Ch. 55, L. 1947; amd. Sec. 18, Ch. 234, L. 1971; R.C.M. 1947, 11-2249(part).

7-12-4342. Details relating to lighting district bonds and warrants. (1) Said warrants or bonds shall be in the denomination of $100 or fractions or multiples thereof and may be issued in installments.

(2) Such warrants or bonds shall be redeemed by the treasurer when there is money available therefor in the fund against which said warrants or bonds are issued and shall bear interest from the date of registration thereof until called for redemption or paid in full, interest to be payable annually on January 1 of each year as expressed by the interest coupon attached thereto, which may bear the engraved facsimile signature of the mayor and city clerk.

(3) Such warrants or bonds may extend over a period not to exceed 8 years.

(4) The requirements of this section and 7-12-4341 shall apply to all special improvement lighting districts, including those now in the process of formation or to be formed hereafter.

History: En. Sec. 4, Ch. 143, L. 1915; re-en. Sec. 5263, R.C.M. 1921; re-en. Sec. 5263, R.C.M. 1935; amd. Sec. 1, Ch. 55, L. 1947; amd. Sec. 18, Ch. 234, L. 1971; R.C.M. 1947, 11-2249(part).

7-12-4343 and 7-12-4344 reserved.

7-12-4345. Water user entities exempt from special assessments. Rights-of-way, ditches, flumes, pipelines, dams, water rights, reservoirs, equipment, machinery, motor vehicles, and other personal property owned by a nonprofit water company, water users' association, irrigation company, canal company, ditch company, reservoir company, or similar nonprofit water user entity are exempt from every special assessment imposed by any improvement or maintenance district created under Title 7, chapter 12.

History: En. Sec. 1, Ch. 276, L. 1987.

7-12-4346 through 7-12-4350 reserved.

7-12-4351. Major modification of existing lighting district. (1) The council of any city or town is authorized to:

(a) modify an existing special improvement lighting district by changing the number and spacing of lights, replacing overhead transmission lines with underground lines, increasing or decreasing the level of illumination, or making other major modifications required by the public interest and convenience;

(b) require that all or any part of the cost of the modification be paid by the owners of the property within the district; and

(c) assess and collect all or any part of the cost of the modification by special assessment against the property within the district.

(2) Before modifying an existing lighting district, the city council shall adopt a resolution of intention to do so, either by motion of the council or upon presentation of a petition signed by the owners or agents of at least 10% of the property within the district.

(3) The provisions in 7-12-4302 through 7-12-4305 for the content of the resolution, public notice, protest, and consideration of protest that apply to the creation of a special improvement lighting district also apply to the modification of an existing special improvement lighting district authorized by this section.

History: En. Sec. 1, Ch. 46, L. 1987.

7-12-4352. Jurisdiction to modify lighting district. If no protests have been delivered to the clerk of the city or town council within 15 days of the date of the first publication of the notice of the passage of the resolution of intention required by 7-12-4351 or if a protest has been found to be insufficient or has been overruled, the city or town council is considered to have acquired jurisdiction to order the proposed modification.

History: En. Sec. 2, Ch. 46, L. 1987.

7-12-4353. Objections to irregular proceedings or manner of making a modification. (1) At any time within 60 days from the date of the award of a contract by a city or town council to implement the provisions of 7-12-4352 or at any time within 60 days from the date the council instructs an official of the city or town to cause the necessary equipment or appliances to be procured and installed, an owner of property liable to assessment who claims that any of the previous acts or proceedings relating to the modification are irregular, defective, erroneous, or faulty or that his property will be damaged by making the modification in the manner contemplated may file with the city or town clerk a notice specifying in what respect these acts or proceedings are irregular, defective, erroneous, or faulty or in what manner and to what extent his property will be damaged by the modification.

(2) Objections to any act or proceeding or in relation to the making of the modification not made in writing or not made in the manner provided for in subsection (1) and all claims for damage therefor are waived by the property owners, providing the notice of the passage of the resolution has been published and the notices of the modification posted as provided in 7-12-4303.

History: En. Sec. 3, Ch. 46, L. 1987.

7-12-4354. Minor modifications exempt. Nothing in 7-12-4351 through 7-12-4354 prevents the city or town council from eliminating unnecessary lights, relocating individual lights, upgrading lights and lighting-related facilities in the interest of energy conservation, or making other minor modifications in a special improvement lighting district without following the procedures described in 7-12-4351 through 7-12-4353.

History: En. Sec. 4, Ch. 46, L. 1987.

Part 44

Special Provisions for Street Maintenance Districts

Part Cross-References

District cost excluded from municipal budget, 7-6-4222.

Maintenance of trafficways, 7-14-4107.

7-12-4401. Street maintenance district authorized — definition. (1) Whenever the council of any city or town desires to create a district for the maintenance of all or any part of the streets or avenues of its city or town as provided in this part, it shall provide by ordinance a method of doing said work and of paying for the same under the restrictions and regulations provided in this part.

(2) "Maintenance" as used in this part includes but is not limited to sprinkling, graveling, oiling, chip sealing, seal coating, overlaying, treating, general cleaning, sweeping, flushing, snow removal, and leaf and debris removal.

History: En. Sec. 24, p. 218, L. 1897; re-en. Sec. 3390, Rev. C. 1907; re-en. Sec. 5272, R.C.M. 1921; amd. Sec. 1, Ch. 97, L. 1927; re-en. Sec. 5272, R.C.M. 1935; R.C.M. 1947, 11-2263; amd. Sec. 3, Ch. 212, L. 1983.

7-12-4402. Creation of maintenance districts. A resolution shall be adopted dividing the whole or any part of the city or town into maintenance districts, to be known and designated by number. Said resolution shall plainly define the boundaries of the district or districts and describe the streets, alleys, and public places or any part thereof constituting the district or districts.

History: En. Sec. 25, p. 218, L. 1897; re-en. Sec. 3391, Rev. C. 1907; re-en. Sec. 5273, R.C.M. 1921; re-en. Sec. 5273, R.C.M. 1935; R.C.M. 1947, 11-2264; amd. Sec. 4, Ch. 212, L. 1983.

7-12-4403. Alteration of maintenance districts. When once defined, maintenance districts may not be changed during the same calendar year but may be changed by resolution in any succeeding year.

History: En. Sec. 26, p. 218, L. 1897; re-en. Sec. 3392, Rev. C. 1907; re-en. Sec. 5274, R.C.M. 1921; re-en. Sec. 5274, R.C.M. 1935; R.C.M. 1947, 11-2265; amd. Sec. 5, Ch. 212, L. 1983.

7-12-4404. Manner of providing maintenance. The maintenance in districts so established may be done by contract or by forces employed by the city or town or by both, in such manner as the council may elect.

History: En. Sec. 27, p. 218, L. 1897; amd. Sec. 3, Ch. 123, L. 1903; re-en. Sec. 3393, Rev. C. 1907; re-en. Sec. 5275, R.C.M. 1921; re-en. Sec. 5275, R.C.M. 1935; R.C.M. 1947, 11-2266(part); amd. Sec. 6, Ch. 212, L. 1983.

7-12-4405. Improvements within maintenance districts — ordinance required. (1) Cities and towns are hereby authorized and empowered to prepare and improve streets, avenues, and alleys within the maintenance districts so that the maintenance will be of a durable and continuing benefit. The city or town council shall provide by ordinance a method or methods of doing said work and improvements.

(2) Cities and towns are authorized to maintain the work and improvements made under subsection (1).

(3) At least 12 days must elapse between the day on which said proposed ordinance is introduced and the day on which final action thereon is taken.

History: (1)En. Sec. 1, Ch. 12, Ex. L. 1933; re-en. Sec. 5271.1, R.C.M. 1935; Sec. 11-2258, R.C.M. 1947; (2)En. Sec. 3, Ch. 12, Ex. L. 1933; re-en Sec. 5271.3, R.C.M. 1935; Sec. 11-2260, R.C.M. 1947; (3)En. Sec. 5, Ch. 12, Ex. L. 1933; re-en. Sec. 5271.5, R.C.M. 1935; Sec. 11-2262, R.C.M. 1947; R.C.M. 1947, 11-2258, 11-2260, 11-2262(part); amd. Sec. 7, Ch. 212, L. 1983.

7-12-4406. Notice of ordinance for improvements. The city or town clerk must give notice of the introduction of such proposed ordinance and of the time it will be up for final adoption:

(1) by publication three times in a daily newspaper or in a weekly newspaper for two successive issues in such city or town; or

(2) if there be no such newspaper, then by posting for at least 10 days in three public places in each of the wards of said city or town.

History: En. Sec. 5, Ch. 12, Ex. L. 1933; re-en. Sec. 5271.5, R.C.M. 1935; R.C.M. 1947, 11-2262(part); amd. Sec. 8, Ch. 212, L. 1983.

7-12-4407. Protest against ordinance for improvements. No further action shall be taken upon the proposed district for 1 year if a written protest against passage of the proposed ordinance is filed by:

(1) owners of property within the proposed maintenance district having a taxable valuation, when aggregated, representing not less than 50% of the total taxable valuation of property within the district;

(2) not less than 50% of the owners of property within the district; or

(3) owners of property within the proposed maintenance district having projected assessments, when aggregated, representing not less than 50% of the total projected assessments for property within the district.

History: En. Sec. 5, Ch. 12, Ex. L. 1933; re-en. Sec. 5271.5, R.C.M. 1935; R.C.M. 1947, 11-2262(part); amd. Sec. 9, Ch. 212, L. 1983; amd. Sec. 5, Ch. 657, L. 1985.

7-12-4408 through 7-12-4420 reserved.

7-12-4421. Choice in manner of making assessments. The assessments for the costs and expenses of maintaining streets, alleys, and public places shall be made against all of the property embraced within each maintenance district by one of the methods provided in 7-12-4422.

History: **En. Sec. 28, p. 218, L. 1897; re-en. Sec. 3394, Rev. C. 1907; re-en. Sec. 5276, R.C.M. 1921; amd. Sec. 2, Ch. 97, L. 1927; re-en. Sec. 5276, R.C.M. 1935; R.C.M. 1947, 11-2267(part); amd. Sec. 10, Ch. 212, L. 1983; amd. Sec. 1, Ch. 657, L. 1985.**

7-12-4422. Assessment of costs — area, frontage, lot, and taxable valuation options. (1) For the purposes of this section, "assessable area" means the portion of a lot or parcel of land that is benefited by the maintenance district. The assessable area may be less than but may not exceed the actual area of the lot or parcel.

(2) The city council shall assess the percentage of the cost of maintenance established in 7-12-4425 against the entire district as follows:

(a) each lot or parcel of land within such district may be assessed for that part of the cost which its assessable area bears to the assessable area of the entire district, exclusive of streets, avenues, alleys, and public places;

(b) each lot or parcel of land within such district abutting upon a street upon which maintenance is done may be assessed for that part of the cost which its street frontage bears to the street frontage of the entire district;

(c) if the city council determines that the benefits derived from the maintenance by each lot or parcel are substantially equivalent, the cost may be assessed equally to each lot or parcel located within the district without regard to the assessable area of the lot or parcel;

(d) each lot or parcel of land, including the improvements thereon, may be assessed for that part of the cost of the district which its taxable valuation bears to the total taxable valuation of the property of the district; or

(e) any combination of the assessment options provided in subsections (2)(a) through (2)(d) may be used for the district as a whole or for any lot or parcel within the district.

History: **En. Sec. 28, p. 218, L. 1897; re-en. Sec. 3394, Rev. C. 1907; re-en. Sec. 5276, R.C.M. 1921; amd. Sec. 2, Ch. 97, L. 1927; re-en. Sec. 5276, R.C.M. 1935; R.C.M. 1947, 11-2267(2); amd. Sec. 2, Ch. 657, L. 1985; amd. Sec. 1, Ch. 178, L. 1987.**

7-12-4423. Repealed. Sec. 6, Ch. 657, L. 1985.

History: **En. Sec. 28, p. 218, L. 1897; re-en. Sec. 3394, Rev. C. 1907; re-en. Sec. 5276, R.C.M. 1921; amd. Sec. 2, Ch. 97, L. 1927; re-en. Sec. 5276, R.C.M. 1935; R.C.M. 1947, 11-2267(1); amd. Sec. 11, Ch. 212, L. 1983.**

7-12-4424. Repealed. Sec. 6, Ch. 657, L. 1985.

History: **En. Sec. 28, p. 218, L. 1897; re-en. Sec. 3394, Rev. C. 1907; re-en. Sec. 5276, R.C.M. 1921; amd. Sec. 2, Ch. 97, L. 1927; re-en. Sec. 5276, R.C.M. 1935; R.C.M. 1947, 11-2267(3); amd. Sec. 12, Ch. 212, L. 1983.**

7-12-4425. Resolution for assessment of costs of maintenance. (1) The city council shall estimate, as near as practicable, the cost of maintenance in each established district annually, not later than the second Monday in August. The council shall pass and finally adopt a resolution specifying the district assessment option and levying and assessing all the property within the several districts with an amount equal to not less than 75% of the entire cost of said work.

(2) The resolution levying the assessment to defray the cost of maintenance shall contain or refer to a list in which shall be described the lot or parcel of land assessed, with the name of the owner thereof if known, and the amount levied thereon set opposite.

(3) Such resolution shall be kept on file in the office of the city clerk.

History: (1)En. Sec. 27, p. 218, L. 1897; amd. Sec. 3, Ch. 123, L. 1903; re-en. Sec. 3393, Rev. C. 1907; re-en. Sec. 5275, R.C.M. 1921; re-en. Sec. 5275, R.C.M. 1935; Sec. 11-2266, R.C.M. 1947; (2), (3)En. Sec. 29, p. 218, L. 1897; re-en. Sec. 3395, Rev. C. 1907; re-en. Sec. 5277, R.C.M. 1921; re-en. Sec. 5277, R.C.M. 1935; Sec. 11-2268, R.C.M. 1947; R.C.M. 1947, 11-2266(part), 11-2268(part); amd. Sec. 13, Ch. 212, L. 1983; amd. Sec. 3, Ch. 657, L. 1985.

7-12-4426. Notice of resolution for assessment. (1) A notice, signed by the city clerk, stating that the resolution levying a special assessment to defray the cost of maintenance in the district or districts is on file in his office and subject to inspection for a period of 5 days, shall be published at least once in a newspaper published in the city or town.

(2) The notice shall state the time and place at which objections to the final adoption of the resolution will be heard by the council. The time for the hearing shall be not less than 5 days after the publication of the notice.

History: En. Sec. 29, p. 218, L. 1897; re-en. Sec. 3395, Rev. C. 1907; re-en. Sec. 5277, R.C.M. 1921; re-en. Sec. 5277, R.C.M. 1935; R.C.M. 1947, 11-2268(part); amd. Sec. 17, Ch. 251, L. 1979; amd. Sec. 14, Ch. 212, L. 1983.

7-12-4427. Hearing on resolution for assessment of costs. (1) At the time so set, the council shall meet and hear all objections which may be made to such assessment or any part thereof and may adjourn from time to time for that purpose and may by resolution modify such assessment in whole or in part.

(2) A copy of the resolution, certified by the city clerk, must be delivered to the financial officer, and the assessments shall be placed upon the tax roll and collected in the same manner as other taxes.

History: En. Sec. 29, p. 218, L. 1897; re-en. Sec. 3395, Rev. C. 1907; re-en. Sec. 5277, R.C.M. 1921; re-en. Sec. 5277, R.C.M. 1935; R.C.M. 1947, 11-2268(part); amd. Sec. 15, Ch. 212, L. 1983.

7-12-4428. Assessment of costs of improvements and maintenance of improvements. Cities and towns are authorized to assess the cost of the work, improvements, and maintenance authorized by 7-12-4405 against the property in maintenance districts in the manner and as provided in 7-12-4421 and 7-12-4422 to meet the payments required to be made each year.

History: En. Sec. 4, Ch. 12, Ex. L. 1933; re-en. Sec. 5271.4, R.C.M. 1935; R.C.M. 1947, 11-2261; amd. Sec. 16, Ch. 212, L. 1983; amd. Sec. 4, Ch. 657, L. 1985.

7-12-4429. Financial assistance from the United States. Cities and towns are authorized to:

(1) enter into suitable agreements with the United States of America for loans of money and for receiving financial assistance to do the work and improvements contemplated by 7-12-4405; and

(2) provide for the repayment thereof by yearly payments from funds derived from districts created under 7-12-4402, apportioned over a period of time not exceeding 20 years.

History: En. Sec. 2, Ch. 12, Ex. L. 1933; re-en. Sec. 5271.2, R.C.M. 1935; R.C.M. 1947, 11-2259; amd. Sec. 17, Ch. 212, L. 1983; amd. Sec. 18, Ch. 370, L. 1987.

7-12-4430 through 7-12-4435 reserved.

7-12-4436. Water user entities exempt from special assessments. Rights-of-way, ditches, flumes, pipelines, dams, water rights, reservoirs, equipment, machinery, motor vehicles, and other personal property owned by a nonprofit water company, water users' association, irrigation company, canal company, ditch company, reservoir company, or similar nonprofit water user entity are exempt from every special assessment imposed by any improvement or maintenance district created under Title 7, chapter 12.

History: En. Sec. 1, Ch. 276, L. 1987.

Part 45

Special Provisions for Street Parking Districts

7-12-4501. Abandonment of street parking improvement district — resolution. Whenever it is deemed to the best interest of a city or town or the inhabitants thereof by the mayor and council of such city or town, the mayor and council are authorized to abandon the maintenance of any street parking improvement district established in such city or town by the passage of a resolution of intention to abandon the same.

History: En. Sec. 1, Ch. 38, L. 1951; R.C.M. 1947, 11-2285(part).

7-12-4502. Notice of intention to abandon district. (1) After the passage of the resolution provided for in 7-12-4501, the city or town clerk shall give notice of such intention to abandon by one publication in a newspaper published in such city or town at least 10 days prior to the passage of a resolution abandoning the same. In case there is no publication of a newspaper in such city or town, then notice shall be given by the posting of a notice of such intention to abandon in three places within such district to be abandoned.

(2) Said notice shall specify the boundaries of such district to be abandoned, the date of the passage of the resolution of intention to abandon, and the date set for the passage of the resolution of abandonment and that unless 40% of the owners in the district file written protest with the clerk of such city or town before the passage of the resolution, the same will be passed. Said notice shall also set forth, when applicable, that it shall be the duty of the owners of the property abutting on the street parking district involved to maintain the same after such abandonment.

History: En. Sec. 1, Ch. 38, L. 1951; R.C.M. 1947, 11-2285(part).

7-12-4503. Protest to abandonment of district. Unless 40% of the property owners owning property abutting the district file written protests against the abandonment by the date set for the passage of the resolution of abandonment, the council shall pass a resolution declaring the district abandoned.

History: En. Sec. 1, Ch. 38, L. 1951; R.C.M. 1947, 11-2285(part); amd. Sec. 18, Ch. 251, L. 1979.

7-12-4504. Responsibility and liability of property owners following abandonment of district. (1) Following passage of the resolution of abandonment, it shall be the duty of all property owners owning property abutting said district to maintain such portion thereof abutting their property.

(2) Such abandonment, however, shall not relieve the property owners from the assessment and payment of a sufficient amount to liquidate all charges existing against said district prior to the date of abandonment.

History: En. Sec. 1, Ch. 38, L. 1951; R.C.M. 1947, 11-2285(part).

7-12-4505 through 7-12-4510 reserved.

7-12-4511. Water user entities exempt from special assessments. Rights-of-way, ditches, flumes, pipelines, dams, water rights, reservoirs, equipment, machinery, motor vehicles, and other personal property owned by a nonprofit water company, water users' association, irrigation company, canal company, ditch company, reservoir company, or similar nonprofit water user entity are exempt from every special assessment imposed by any improvement or maintenance district created under Title 7, chapter 12.

History: En. Sec. 1, Ch. 276, L. 1987.

Part 46

Fire Hydrant Maintenance Districts

7-12-4601. Authorization to create fire hydrant maintenance districts. Whenever the public convenience and necessity may require, one or more fire hydrant maintenance districts may be established in a city or town.

History: En. Sec. 1, Ch. 572, L. 1983.

7-12-4602. Resolution of intention to create a fire hydrant maintenance district. (1) Before creating any fire hydrant maintenance district, the city council shall pass a resolution of intention to do so.

(2) The resolution must designate the district number, describe the boundaries of the district, provide an estimate of the cost of any improvement and the cost of maintaining district fire hydrants, and the proportion of such costs to be assessed against the property within the district.

History: En. Sec. 2, Ch. 572, L. 1983.

7-12-4603. Notice of resolution of intent to create a fire hydrant maintenance district. (1) Upon passing the resolution required by 7-12-4602, the council shall give notice of such passage. The notice must be published for 5 days in a daily newspaper or, if there is no daily newspaper, in one issue of a weekly newspaper in the city or town. If no newspaper is published in the city or town, notice must be given by posting the notice for 5 days in three public places in the city or town. A copy of the notice must be mailed to the last-known address of every person, firm, or corporation having property within the proposed district on the same day the notice is first published or posted.

(2) The notice must describe the general character of the proposed improvement, state the estimated cost of the improvement and the cost of maintaining the hydrants within the district for the first year, and designate the time when and place where the council will hear and pass upon all protests against the establishment of the improvement or the creation of the district. The notice must refer to the resolution on file in the office of the city clerk for a description of the boundaries.

History: En. Sec. 3, Ch. 572, L. 1983.

7-12-4604. Protest against creation of fire hydrant maintenance district. At any time within 15 days after the date of the first publication or posting of the notice of passage of the resolution of intention, any owner of property who would be liable for district assessments may make a written protest against the proposed improvement or the creation of the district, or both. The protest must be delivered, in writing, to the clerk of the city council, who shall endorse thereon the date of its receipt by him.

History: En. Sec. 4, Ch. 572, L. 1983.

7-12-4605. Consideration of protest. (1) At the next regular meeting of the city council after the expiration of the 15-day protest period provided for in 7-12-4604, the city council shall proceed to hear and pass upon all protests, and its decision is final and conclusive. If the council finds that the owners of a majority of the property proposed to be assessed have protested on grounds of cost of the improvement, no further proceedings may be taken on the subject of such proposed improvement district for a period of at least 6 months from the date of expiration of the 15-day protest period.

(2) In determining whether or not sufficient protests have been filed to prevent further proceedings, property owned by a county, city, or town is considered the same as other property in the district.

(3) The city council may adjourn and reconvene the hearing on protests from time to time.

History: En. Sec. 5, Ch. 572, L. 1983.

7-12-4606. Resolution to create fire hydrant maintenance district. (1) The city council has jurisdiction to order the proposed improvements if:

(a) no protests have been delivered to the clerk of the city council within the 15-day protest period provided for in 7-12-4604; or

(b) protests have been found by the city council to be insufficient in number to halt further proceedings and such protests have been heard on their merits and denied.

(2) Before ordering the proposed improvements, the city council shall pass a resolution creating the fire hydrant maintenance district in accordance with the resolution of intention previously introduced and passed by the council.

History: En. Sec. 6, Ch. 572, L. 1983.

7-12-4607 through 7-12-4610 reserved.

7-12-4611. Resolution for assessment — assessment options. The city or town council shall estimate, as nearly as practicable, the entire cost of installing and maintaining fire hydrants each year and the portion thereof to be assessed against the property within the district. Before the first Monday in October, the council must pass and finally adopt a resolution levying and assessing the property within the district. The city or town council, for the purpose of making the assessment, shall adopt one of the following methods:

(1) The council may assess the cost of fire hydrant installation and maintenance against the entire district, each lot or parcel of land within the district to be assessed for that part of the whole cost which its area bears to the area of the entire district, exclusive of streets, avenues, alleys, and public places.

(2) The council may assess the cost of fire hydrant installation and maintenance against the entire district, each lot or parcel of land within the district bordering or abutting on the streets where fire hydrants are located to be assessed in its lineal proportion to the total lineal feet bordering or abutting on such streets.

(3) If the city council determines that the area, frontage, or combination options are inequitable, it may assess the cost of fire hydrant installation and maintenance:

(a) against the entire district, each lot or parcel of land within such district to be assessed for that part of the whole cost that its taxable valuation, including improvements, bears to the taxable valuation of the entire district; or

(b) against the entire district, each lot or parcel of land receiving service within the district to be assessed by apportioning the whole cost according to a ratio between the water meter size servicing each lot or parcel and the whole cost.

History: En. Sec. 7, Ch. 572, L. 1983; amd. Sec. 1, Ch. 266, L. 1985.

7-12-4612. Collection method — utility options — resolution of assessment. The city council may assess the costs of fire hydrant maintenance through a resolution of assessment or it may collect the costs by assessing them along with water and sewer fees.

History: En. Sec. 8, Ch. 572, L. 1983.

7-12-4613 through 7-12-4620 reserved.

7-12-4621. Water user entities exempt from special assessments. Rights-of-way, ditches, flumes, pipelines, dams, water rights, reservoirs, equipment, machinery, motor vehicles, and other personal property owned by a nonprofit water company, water users' association, irrigation company, canal company, ditch company, reservoir company, or similar nonprofit water user entity are exempt from every special assessment imposed by any improvement or maintenance district created under Title 7, chapter 12.

History: En. Sec. 1, Ch. 276, L. 1987.

CHAPTER 13

UTILITY SERVICES

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Part 44 — Water Supply and Regulation

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Part 45 — Local Water Quality Districts

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Part 1
Metropolitan Sanitary and/or Storm Sewer District

Part Cross-References

County water and sewer districts, Title 7, ch. 13, parts 22 and 23.

Water quality permits, Title 75, ch. 5, part 4.

Sewage system operation, 75-5-511 through 75-5-515.

7-13-101. Authorization to create metropolitan sanitary and/or storm sewer districts. Whenever the public convenience and necessity may require, in order to construct sanitary and/or storm sewer systems within any county, which sanitary and/or storm sewer systems would serve the inhabitants of any county as well as the inhabitants of any city or town within said county, the board of county commissioners, with the approval of the city or town council, may create metropolitan sanitary and/or storm sewer districts.

History: En. Sec. 1, Ch. 185, L. 1957; R.C.M. 1947, 16-4401(part).

7-13-102. Resolution of intention to create metropolitan sanitary and/or storm sewer district. (1) Before creating any metropolitan sanitary and/or storm sewer district, the board of county commissioners shall pass a resolution of intention to do so.

(2) The resolution shall designate:

(a) the proposed name of such district;

(b) the necessity for the proposed district;

(c) a general description of the territory or lands to be included within said district, giving the boundaries thereof;

(d) the general character of the sanitary and/or storm sewer system and its proposed location;

(e) the name of the engineer who is to have charge of the work; and

(f) the estimated cost thereof.

History: En. Sec. 1, Ch. 185, L. 1957; R.C.M. 1947, 16-4401(part).

7-13-103. Sufficiency of description in resolution of intention. In all resolutions, notices, orders, and determinations subsequent to the resolution of intention and notice of improvements, it shall be sufficient to briefly describe the work or the metropolitan sanitary and/or storm sewer district, or both, and to refer to the resolution of intention for further particulars.

History: En. Sec. 5, Ch. 185, L. 1957; R.C.M. 1947, 16-4405.

7-13-104. Transmittal of resolution of intention to municipalities. Upon passage of such resolution of intention, the board of county commissioners shall transmit a copy of the same to the executive head of any city or town within the proposed district for consideration by such city or town council.

History: En. Sec. 2, Ch. 185, L. 1957; R.C.M. 1947, 16-4402(part).

7-13-105. Concurrence required for further proceedings. If the city or town council does not concur in the resolution of the board of county commissioners, the board shall have no authority to proceed further with the creation of the district.

History: En. Sec. 2, Ch. 185, L. 1957; R.C.M. 1947, 16-4402(part).

7-13-106. Resolution of concurrence. If the city or town council shall by resolution concur in the resolution of the board of county commissioners, a copy of the resolution of concurrence shall be transmitted to the board.

History: En. Sec. 2, Ch. 185, L. 1957; R.C.M. 1947, 16-4402(part).

7-13-107. Notice of resolution of intention upon concurrence — hearing. (1) If the city or town council concurs in the resolution of the board of county commissioners, the board must give notice of the passage of its resolution of intention and of the concurrence therein by the city or town council.

(2) The notice must be published for 10 consecutive days in a daily newspaper or in two issues of a weekly newspaper published nearest to the place where such improvement district is to be created. The board shall also

cause a copy of such notice to be posted in three public places within the boundaries of such special improvement district. A copy of such notice shall be mailed to every person, firm, or corporation or the agent of such person, firm, or corporation owning property within the proposed district, at his last known place of residence, upon the same day such notice is first published or posted.

(3) Such notice must describe the general character of the improvement or improvements so proposed to be made, state the estimated cost thereof, and designate the time when and the place where the board will hear and pass upon all protests that may be made against the making or maintenance of such improvements or the creation of such district. The notice shall refer to the resolution on file in the office of the county clerk for the description of the boundaries.

History: En. Sec. 2, Ch. 185, L. 1957; R.C.M. 1947, 16-4402(part).

7-13-108. Right to protest. (1) At any time within 30 days after the date of the first publication of the passage of the resolution of intention, any owner of property liable to be assessed for said work may make written protest against the proposed work.

(2) Such protest must be in writing and be delivered to the county clerk, who shall endorse thereon the date of the receipt by him.

History: En. Sec. 3, Ch. 185, L. 1957; R.C.M. 1947, 16-4403(part).

7-13-109. Sufficient protest to bar proceedings. If the protest against the proposed work is made by the owners of more than 50% of the area in the proposed district, no further proceedings shall be taken by the board of county commissioners.

History: En. Sec. 3, Ch. 185, L. 1957; R.C.M. 1947, 16-4403(part).

7-13-110. Hearing on protest. (1) At the next regular meeting of the board of county commissioners after the expiration of the time within which said protest may be made, the board shall proceed to hear and pass upon all protests so made, and its decision shall be final and conclusive.

(2) In determining whether or not sufficient protests have been filed in the proposed district to prevent further proceedings therein, property owned by the city, county, and school districts shall be considered the same as any other property in the district.

(3) The board may adjourn said hearing from time to time.

History: En. Sec. 3, Ch. 185, L. 1957; R.C.M. 1947, 16-4403(part).

Cross-References

Application to community college districts, 20-15-403.

7-13-111. Resolution creating district — power to order improvements. (1) Before ordering any of the proposed improvements, the board of county commissioners shall pass a resolution creating the metropolitan sanitary and/or storm sewer district in accordance with the resolution of intention theretofore introduced and passed by the board.

(2) The board shall be deemed to have acquired jurisdiction to order improvements immediately upon the occurrence of one of the following:

(a) when no protests have been delivered to the county clerk within 30 days after the date of the first publication of the notice of the passing of the resolution of intention;

(b) when a protest shall have been found by said board to be insufficient;
(c) when a protest shall have been overruled.

History: En. Sec. 4, Ch. 185, L. 1957; R.C.M. 1947, 16-4404.

7-13-112. County commissioners to administer district. (1) The board of county commissioners shall be ex officio commissioners of the metropolitan sanitary and/or storm sewer district formed under the provisions of this part and shall have sole and complete jurisdiction over all drainage structures and sewage treating plants which are now or may be hereafter built and situated within said district. The commission shall be responsible for the proper functioning and maintenance thereof.

(2) The commission shall be responsible for the condition and maintenance of all publicly owned streets, alleys, land, parks, or other thoroughfares within the boundaries of such district insofar as such may be affected by the construction or maintenance of the structures under control and jurisdiction of such district.

History: En. Sec. 11, Ch. 185, L. 1957; R.C.M. 1947, 16-4411.

Cross-References

General powers of County Commissioners relating to roads, Title 7, ch. 14, part 21.

Procurement of architectural, engineering, and land surveying services by governmental entities, Title 18, ch. 8, part 2.

7-13-113. Change of boundaries — limitations. (1) The county commissioners may by resolution make such changes in the boundaries of a district as they shall deem reasonable and proper but may not delete any portion of the proposed area which will create an island of included or excluded lands.

(2) They may not delete any portion of the proposed area which is contributing or may reasonably be expected to contribute to the pollution of any watercourse or body of water in the proposed area.

(3) For the purpose of subsection (2), it will be conclusively presumed that an area which is within 1,500 feet of a proposed or existing sanitary sewer is contributing to the pollution of a watercourse in the proposed area.

History: En. 16-4414, 16-4415 by Secs. 1, 2, Ch. 165, L. 1965; R.C.M. 1947, 16-4414(part), 16-4415.

Cross-References

Restriction on assessments following change of boundaries, 7-13-123.

7-13-114. Applicable provisions of laws relating to rural improvement districts. The provisions of 7-12-2101, 7-12-2106, 7-12-2107, 7-12-2110, 7-12-2115 through 7-12-2120, 7-12-2131 through 7-12-2140, 7-12-2153, 7-12-2154, 7-12-2161 through 7-12-2165, 7-12-2166(2), 7-12-2168(2), and 7-12-2169 and 7-12-2171 through 7-12-2174 pertaining to rural improvement districts shall likewise apply under the provisions of this part unless in conflict with the provisions of this part.

History: En. Sec. 13, Ch. 185, L. 1957; R.C.M. 1947, 16-4413; amd. Sec. 19, Ch. 370, L. 1987; amd. Sec. 13, Ch. 449, L. 1989.

7-13-115. Adequate records to be maintained. The records of the district pertaining to the collection of the operation and maintenance tax levied hereunder and the records of the district pertaining to expenditures for construction of the system shall be kept and maintained in the office of the treasurer of the county wherein the district is located. These records shall include but not be limited to a list of individual property which is delinquent in payment, together with the name of the owner or owners thereof.

History: En. Sec. 5, Ch. 202, L. 1967; R.C.M. 1947, 16-4416.4.

7-13-116 through 7-13-120 reserved.

7-13-121. Assessment of costs. To defray the cost of installing and maintaining either sanitary or storm sewer systems under the provisions of this part, the board of county commissioners shall adopt the following method of assessment:

(1) The board shall assess the entire cost of the improvements against the entire metropolitan sanitary district.

(2) Each lot or parcel of land assessed in such district is to be assessed with that part of the whole cost which its area bears to the area of the entire district, exclusive of streets, avenues, alleys, and public places.

History: En. Sec. 7, Ch. 185, L. 1957; R.C.M. 1947, 16-4407.

7-13-122. Status of federal property within metropolitan sanitary and/or storm sewer district. Whenever any lot, piece, or parcel of land belonging to the United States or mandatory of the government shall front upon the proposed work or improvement or is to be included within the district declared by the board of county commissioners in its resolution of intention to be a district to be assessed to pay the cost and expenses thereof, the board shall in the resolution of intention declare that the said lots, pieces, or parcels of land shall be omitted from the assessment to be made thereto to cover the cost and expenses of said work or improvement, and the cost of said work or improvement in front of said lots, pieces, or parcels of land shall be paid by the county from its general fund.

History: En. Sec. 6, Ch. 185, L. 1957; R.C.M. 1947, 16-4406.

7-13-123. Restriction on assessments following change of boundaries. Nothing in 7-13-113, however, shall permit the assessment of the cost of any such system against the lands remaining in the district after any such boundary change at a rate per square foot higher than the rate per square foot which would have been so assessed if the entire cost of the improvements as estimated in the resolution of intention had been assessed against each lot and parcel of land included within the boundaries of the district as described in said resolution of intention unless a new resolution of intention to recreate the district is adopted and a hearing held thereon upon notice as required for the original resolution of intention.

History: En. 16-4414 by Sec. 1, Ch. 165, L. 1965; R.C.M. 1947, 16-4414(part).

7-13-124. Resolution to assess and levy tax for making improvements. (1) To defray the cost of making improvements in any special improvement district, the board of county commissioners shall by resolution levy and assess a tax upon all property in the district created for such purpose by using for a basis for such assessment the method provided for by this part.

(2) Such resolution shall contain a description of each lot or parcel of land, with the name of the owner if known, and the amount of each partial payment when made and the day when the same shall become delinquent.

(3) Such resolution, signed by the chairman of the board, shall be kept on file in the office of the county clerk.

History: **En. Secs. 8, 9, Ch. 185, L. 1957; R.C.M. 1947, 16-4408(part), 16-4409(part).**

Cross-References

Method of assessment, 7-13-121.

7-13-125. Term of assessment for costs of construction. The payment of the assessment to defray the cost of constructing any improvements in said metropolitan sanitary and/or storm sewer district may be spread over a term of not to exceed 20 years, payment to be made in equal installments.

History: **En. Sec. 8, Ch. 185, L. 1957; R.C.M. 1947, 16-4408(part).**

7-13-126. Notice of resolution to assess and levy tax for making improvements — protest. (1) A notice, signed by the county clerk and stating that the resolution levying a special assessment to defray the cost of making such improvements is on file in the office of the county clerk and is subject to inspection, shall be published in at least one publication in a newspaper published nearest to where the special improvement is to be made.

(2) Such notice shall state the time and place in which objections to the final adoption of such resolution will be heard by the board of county commissioners.

History: **En. Sec. 9, Ch. 185, L. 1957; R.C.M. 1947, 16-4409(part).**

7-13-127. Hearing on protest. (1) The time for the hearing on protest shall be not less than 5 days after the publication of the notice required by 7-13-126.

(2) At the time so fixed, the board of county commissioners shall meet and hear all such objections and for that purpose may adjourn from day to day. The board may by resolution modify such assessment in whole or in part. A copy of such resolution, certified by the county clerk, must be delivered to the county treasurer 2 days after its passage.

History: **En. Sec. 9, Ch. 185, L. 1957; R.C.M. 1947, 16-4409(part).**

7-13-128. Assessments and other charges as lien. Any special assessment made and levied to defray the cost and expenses of any of the work enumerated in this part, together with any percentages imposed for delinquency and for cost of collection, shall constitute a lien upon and against the property upon which such assessment is made and levied, from and after the date of the passage of the resolution levying such assessment. The lien can only be extinguished by payment of such assessment, with all penalties, costs, and interest.

History: **En. Sec. 10, Ch. 185, L. 1957; R.C.M. 1947, 16-4410.**

7-13-129 through 7-13-140 reserved.

7-13-141. Charges for services. (1) The board of county commissioners shall have authority by ordinance or resolution to fix and establish just and equitable rates, charges, and rentals for the services and benefits directly or indirectly afforded by any sanitary or storm sewer system operated by, controlled by, and under the jurisdiction of a metropolitan sanitary and/or storm sewer district formed under this part.

(2) Such rates, charges, and rentals shall be as nearly as possible equitable in proportion to the services and benefits rendered and may take into consideration the quantity of sewage produced and its concentration and water

pollution qualities in general and the cost of disposal of sewage and storm waters.

History: **En. 16-4416 by Sec. 3, Ch. 165, L. 1965; amd. Sec. 1, Ch. 202, L. 1967; amd. Sec. 1, Ch. 209, L. 1969; R.C.M. 1947, 16-4416(part); amd. Sec. 2, Ch. 419, L. 1981.**

Cross-References

Maintenance of reserve fund, 7-13-156.

7-13-142. Authorization to utilize federal funds. The board of county commissioners is hereby authorized to apply for and receive from the federal government, on behalf of said metropolitan sanitary and/or storm sewer district, any money that may be appropriated by the congress for aiding in local public works projects. Likewise, the board may borrow from the federal government any funds available for assisting in the planning or financing of local public works projects and repay the same out of the money received from the tax levy provided for in this part.

History: **En. Sec. 12, Ch. 185, L. 1957; amd. Sec. 16, Ch. 455, L. 1975; R.C.M. 1947, 16-4412(part).**

7-13-143. Charges for costs when federal funding is sought. Notwithstanding any other section of this part or limitation imposed therein, when the board has applied pursuant to 7-13-142, the board may adopt a system of charges and rates to require that each recipient of treatment works services pays its proportionate share of the costs of operation, maintenance, and replacement and to require industrial users of treatment works to pay that portion of the cost of construction of the treatment works which is allocable to the treatment of that industrial user's wastes.

History: **En. Sec. 12, Ch. 185, L. 1957; amd. Sec. 16, Ch. 455, L. 1975; R.C.M. 1947, 16-4412(part).**

7-13-144. Resolution to establish service charges — hearing — limitations and tax levy. The board of county commissioners shall have authority, subject to the provisions of Title 69, chapter 7, by resolution and after public hearing:

(1) to fix and establish the sewer rates, charges, and rentals at amounts sufficient in each year, to provide income and revenues adequate for the payment of the reasonable expense of operation and maintenance of the system;

(2) to fix and establish an additional charge, for the operation and maintenance of a sanitary and storm sewer system and of a sewage treatment plant; and

(3) to levy and to assess a tax upon the taxable valuation of each and every lot or parcel of land and improvements thereon in the district, not in excess of 2 mills on each dollar of taxable valuation, to provide sufficient revenues for the reserve fund of the amounts necessary to meet the financial requirements of such fund as described in 7-13-151 through 7-13-156.

History: **En. 16-4416 by Sec. 3, Ch. 165, L. 1965; amd. Sec. 1, Ch. 202, L. 1967; amd. Sec. 1, Ch. 209, L. 1969; R.C.M. 1947, 16-4416(part); amd. Sec. 1, Ch. 403, L. 1981; amd. Sec. 3, Ch. 419, L. 1981.**

7-13-145. Hearing and notice on tax levy for operation and maintenance. (1) Not less than 30 days prior to the date of making the levy for operation and maintenance of the system, the county commissioners will hold a public hearing on the resolution.

(2) Notice clearly setting forth the subject matter of the hearing must be given by the commissioners by publication as provided in 7-1-2121, and notice must also be posted in three public places within the district.

History: En. Sec. 2, Ch. 202, L. 1967; R.C.M. 1947, 16-4416.1; amd. Sec. 18, Ch. 349, L. 1985.

7-13-146. Preparation and filing of district budget. (1) Not less than 30 days prior to the date of the public hearing on the resolution, the county commissioners shall prepare and file in the office of the clerk and recorder of the county wherein the district is located and in the office of the board of county commissioners a complete, detailed budget for operation and maintenance of the system, showing all income and expenditures for the year prior to the hearing and all estimated income and expenditures for the next ensuing year which the levy is assessed.

(2) The provisions of law relating to county budgets and expenditures must be complied with by a metropolitan sanitary and/or storm sewer district.

History: En. Secs. 3, 4, Ch. 202, L. 1967; R.C.M. 1947, 16-4416.2, 16-4416.3.

7-13-147 through 7-13-150 reserved.

7-13-151. Authorization for reserve fund. The board of county commissioners may, in order to secure prompt payment of any metropolitan sanitary and/or storm sewer district bonds issued in payment of the cost of improvements in and for the district and the interest thereon as it becomes due, create, establish, and maintain by resolution a fund, to be designated as the "reserve fund", for each issue of such bonds.

History: En. 16-4417 by Sec. 4, Ch. 165, L. 1965; R.C.M. 1947, 16-4417(part).

7-13-152. Sources of money for reserve fund. (1) For the purpose of providing money for the reserve fund, the board of county commissioners may in its discretion, from time to time, transfer to the reserve fund from the operation and maintenance fund of the district such amount or amounts as may be deemed necessary or as may be agreed with the holders of the bonds.

(2) Whenever there shall be money in the bond fund which is not required for payment of any bond of the district or interest thereon, so much as may be necessary to pay the loan referred to in 7-13-154 shall, by order of the board, be transferred to the reserve fund.

History: En. 16-4417 by Sec. 4, Ch. 165, L. 1965; R.C.M. 1947, 16-4417(part).

7-13-153. Transfers to reserve fund considered as loans. The amount or amounts transferred under 7-13-152 shall be deemed and considered as loans from the operation and maintenance fund to the reserve fund.

History: En. 16-4417 by Sec. 4, Ch. 165, L. 1965; R.C.M. 1947, 16-4417(part).

7-13-154. Loans from reserve fund to bond fund as lien. (1) Whenever any loan is made to any bond fund from the reserve fund, the reserve fund shall have a lien therefor on the land within the district which is delinquent in the payment of its assessments; on all unpaid assessments and installments of assessments on the district, whether delinquent or not; and on all money thereafter coming into the bond fund to the amount of such loan, together with interest thereon from the time it was made at the rate or percentage borne by the bond for payment of which or of interest thereon such loan was made.

(2) If, after all the bonds of the district have been fully paid and all money remaining in the bond fund has been transferred to the reserve fund, there still remains a debt from the district to the reserve fund, the board of county commissioners may foreclose the lien upon property within the district owing unpaid assessments to the district for the purpose of paying off said loan to the reserve fund.

History: En. 16-4417 by Sec. 4, Ch. 165, L. 1965; R.C.M. 1947, 16-4417(part).

7-13-155. Limitation on repayment of loan to reserve fund. Nothing in 7-13-151 through 7-13-156 permits the repayment of any loan to the reserve fund at any time unless all interest theretofore accrued on the bonds has been fully paid and all principal theretofore agreed to be paid in accordance with such redemption schedule as may be provided in the resolution or resolutions authorizing such bonds has been paid.

History: En. 16-4417 by Sec. 4, Ch. 165, L. 1965; R.C.M. 1947, 16-4417(part); amd. Sec. 19, Ch. 251, L. 1979.

7-13-156. Covenants to utilize and maintain reserve fund. (1) In connection with the issuance of metropolitan sanitary and/or storm sewer district bonds, the board of county commissioners may undertake and agree:

(a) to issue orders annually authorizing loans or advances from the reserve fund to the fund maintained for the payment of the bonds, in amounts sufficient to make good any deficiency in the bond and interest accounts thereof to the extent that money is available; and

(b) to provide money for the reserve fund pursuant to the provisions of 7-13-141 and 7-13-144 by establishing and collecting rates, charges, and rentals for sewer services and benefits in amounts sufficient to provide net revenues in excess of the current costs of operation and maintenance of the system, sufficient to maintain such balance in the reserve fund as the board may agree to and undertake.

(2) The undertakings and agreements authorized by subsection (1) shall be binding upon the county as long as any of said bonds so offered or any interest thereon remains unpaid.

History: En. 16-4417 by Sec. 4, Ch. 165, L. 1965; R.C.M. 1947, 16-4417(part).

Part 2

Solid Waste Management Districts

7-13-201. Findings and purpose. (1) The improper storage, collection, and disposal of solid waste is hereby declared to be a significant hazard to the health, safety, and welfare of Montana citizens and can cause the spread of disease, air pollution, and water pollution. Solid waste can be an excellent habitat for disease vectors such as rats and insects.

(2) Therefore, it is deemed necessary to provide for the creation of solid waste management districts to control storage, collection, and disposal of solid waste.

History: En. Sec. 1, Ch. 71, L. 1969; R.C.M. 1947, 69-6001; amd. Sec. 29, Ch. 770, L. 1991.

Cross-References

Air quality, Title 75, ch. 2.
Water quality, Title 75, ch. 5.
Litter control, Title 75, ch. 10.

7-13-202. Definitions. As used in this part, unless the context indicates otherwise, the following definitions apply:

(1) "Board" means the board of directors as provided for in 7-13-213.

(2) "Commissioners" means the board of county commissioners.

(3) "Family residential unit" means the residence of a single family.

(4) (a) "Solid waste" means all putrescible and nonputrescible wastes, including but not limited to garbage; rubbish; refuse; ashes; sludge from sewage treatment plants, water supply treatment plants, or air pollution control facilities; construction and demolition wastes; dead animals, including offal; discarded home and industrial appliances; and wood products or wood byproducts and inert materials.

(b) The term does not mean municipal sewage, industrial wastewater effluents, or mining wastes regulated under the mining and reclamation laws administered by the department of environmental quality, slash and forest debris regulated under laws administered by the department of natural resources and conservation, or marketable byproducts.

(5) "Solid waste management district" means an area established within a county for the purpose of planning and operating a solid waste management system as defined in 75-10-103.

History: En. Sec. 2, Ch. 71, L. 1969; amd. Sec. 1, Ch. 136, L. 1971; R.C.M. 1947, 69-6002; amd. Sec. 6, Ch. 770, L. 1991; amd. Sec. 25, Ch. 418, L. 1995.

Compiler's Comments

1995 Amendment: Chapter 418 in definition of solid waste, in (b), substituted "department of environmental quality" for "department of state lands", with regard to reclamation, and substituted "department of natural resources and conservation" for "department of state lands", with regard to forest debris; and made minor changes in style. Amendment effective July 1, 1995.

7-13-203. Authorization to create solid waste management district. (1) Whenever it becomes necessary, the commissioners may create a solid waste management district for the purpose of collection and/or disposal of solid waste.

(2) Cities and towns may be included in the district if approved by the city and town councils.

History: En. Sec. 3, Ch. 71, L. 1969; R.C.M. 1947, 69-6003(part); amd. Sec. 29, Ch. 770, L. 1991.

7-13-204. Resolution of intention to create solid waste management district. (1) Before creating a solid waste management district, the commissioners shall pass a resolution of intention to do so.

(2) The resolution shall designate:

(a) the proposed name of such district;

(b) the necessity for the proposed district;

(c) a general description of the territory or lands of said district, giving the boundaries thereof;

(d) the general character of the collection service;

(e) the proposed fees to be charged for the service; and

(f) the powers to be delegated to the board and the powers to be exercised only with the approval of the county commissioners.

History: En. Sec. 3, Ch. 71, L. 1969; R.C.M. 1947, 69-6003(part); amd. Sec. 1, Ch. 464, L. 1981; amd. Sec. 7, Ch. 770, L. 1991.

7-13-205. Sufficiency of description in resolution of intention. In all resolutions, notices, orders, and determinations subsequent to the resolution of intention and notice of improvement, it shall be sufficient to briefly describe the work of the solid waste management district and to refer to the resolution of intention for further particulars.

History: En. Sec. 6, Ch. 71, L. 1969; amd. Sec. 3, Ch. 293, L. 1973; R.C.M. 1947, 69-6006(part); amd. Sec. 29, Ch. 770, L. 1991.

7-13-206. Transmittal of resolution of intention to municipalities. Upon passage of such resolution of intention, the commissioners shall transmit a copy of the same to the executive head of any incorporated city or town within the proposed district for consideration by such city or town council.

History: En. Sec. 4, Ch. 71, L. 1969; amd. Sec. 1, Ch. 293, L. 1973; R.C.M. 1947, 69-6004(part).

7-13-207. Concurrence or nonconcurrence by municipality. (1) If the city or town council shall by resolution concur in the resolution of the commissioners, a copy of the resolution of concurrence shall be transmitted to the commissioners.

(2) If the incorporated city or town council does not concur in the resolution of the commissioners, the commissioners shall have no authority to include said city or town in the district, but may continue to develop the district, excluding said city or town.

History: En. Sec. 4, Ch. 71, L. 1969; amd. Sec. 1, Ch. 293, L. 1973; R.C.M. 1947, 69-6004(part).

7-13-208. Notice of resolutions of intention and concurrence — hearing. (1) The commissioners must give notice of the passage of the resolution of intention and resolution of concurrence, if applicable, and a notice describing the general characteristics of the collection system and proposed fees to be charged for the service, designating the time and place where the commissioners will hear and pass upon protests made against the operation of the proposed district and stating that a description of the boundaries for the proposed district is included in the resolution on file in the county clerk's office.

(2) The notice shall be published as provided in 7-1-2121 and shall also be posted in three public places within the boundaries of the proposed district.

(3) A copy of the notice shall be mailed as provided in 7-1-2122 to every person, firm, or corporation having real property within the proposed district listed upon the last completed assessment list for county taxes the same day the notice is first published.

History: En. Sec. 4, Ch. 71, L. 1969; amd. Sec. 1, Ch. 293, L. 1973; R.C.M. 1947, 69-6004(2); amd. Sec. 2, Ch. 464, L. 1981; amd. Sec. 19, Ch. 349, L. 1985.

7-13-209. Right to protest. (1) At any time within 21 days after the date of the first publication of the notice provided for in 7-13-208, any owner of property liable to be assessed for said service may make written protest against the proposed service or against the fees proposed to be charged for the service.

(2) Such protest must be in writing and be delivered to the county clerk, who shall endorse thereon the date of the receipt by him.

History: En. Sec. 5, Ch. 71, L. 1969; amd. Sec. 2, Ch. 293, L. 1973; R.C.M. 1947, 69-6005(part); amd. Sec. 3, Ch. 464, L. 1981; amd. Sec. 8, Ch. 770, L. 1991.

7-13-210. Hearing on protest. (1) At the next regular meeting of the commissioners after the expiration of the time within which the protest provided for in 7-13-209 may be made, the commissioners shall proceed to hear and pass upon all protests so made, and its decision shall be final and conclusive.

(2) The commissioners shall evaluate and rule upon the factual accuracy of and legal basis for all protests made against the resolution of intent. Upon determining a factual or legal defect in the resolution of intent, the commission shall halt all further proceedings or modify the resolution.

(3) In determining whether or not sufficient protests have been filed in the proposed district to prevent further proceedings therein, property owned by the city, county, and school districts shall be considered the same as any other property in the district. The commissioners may include commercial and industrial establishments in said district.

(4) The commissioners may adjourn said hearings from time to time.

History: En. Sec. 5, Ch. 71, L. 1969; amd. Sec. 2, Ch. 293, L. 1973; R.C.M. 1947, 69-6005(part); amd. Sec. 27, Ch. 770, L. 1991.

Cross-References

Application to community college districts, 20-15-403.

7-13-211. Sufficient protest to bar proceedings. (1) If the protest against the proposed service is made by the owners of more than 50% of the family residential units in the proposed district, no further proceedings shall be taken by the commissioners.

(2) If the protest against the fees proposed to be charged is made by the owners of more than 50% of the family residential units in the proposed district, the board and commissioners shall hold a hearing to determine an acceptable fee. Following the hearing the commissioners may adopt the proposed fee or a different fee.

(3) Each commercial and industrial service that is to be included in the collection system may be considered as a family residential unit for the purpose of determining percent of protest.

History: En. Sec. 5, Ch. 71, L. 1969; amd. Sec. 2, Ch. 293, L. 1973; R.C.M. 1947, 69-6005(part); amd. Sec. 4, Ch. 464, L. 1981.

7-13-212. Resolution creating district — power to order improvements. (1) Before ordering any of the proposed improvements, the commissioners shall pass a resolution creating the solid waste management district in accordance with the resolution of intention theretofore introduced and passed by the commissioners.

(2) The commissioners may change the boundaries and description of the district from the resolution of intention if the changes do not add territory or increase the proposed fees.

(3) The commissioners shall be deemed to have acquired jurisdiction to order improvements immediately upon the occurrence of one of the following:

(a) when no protests have been delivered to the county clerk within 21 days after the date of the first publication of the notice provided for in 7-13-208;

(b) when an insufficient number of protests have been made as provided for in 7-13-211; or

(c) when a protest shall have been overruled.

History: **En. Sec. 6, Ch. 71, L. 1969; amd. Sec. 3, Ch. 293, L. 1973; R.C.M. 1947, 69-6006(part); amd. Sec. 9, Ch. 770, L. 1991.**

7-13-213. District to be administered by appointed board of directors. Upon creation of any solid waste management district, the commissioners shall appoint a board of directors for the proposed solid waste management district subject to the provisions of 7-1-201 through 7-1-203.

History: **En. Sec. 9, Ch. 71, L. 1969; R.C.M. 1947, 69-6009(part); amd. Sec. 29, Ch. 770, L. 1991; amd. Sec. 5, Ch. 543, L. 1995.**

Compiler's Comments

1995 Amendment: Chapter 543 at end inserted "subject to the provisions of 7-1-201 through 7-1-203".

7-13-214. *(Temporary)* **Composition of board of directors.** (1) The board shall consist of not less than five members.

(2) (a) The board shall consist of one county commissioner, one member from each incorporated city or town that is included in the district, and one member of the county or city-county board of health.

(b) The rest of the board shall consist of interested citizens, distributed equally throughout the district.

(3) In those counties where full-time city-county health departments exist, the city-county board of health may be designated as the board of directors for the solid waste management district. *(Repealed October 1, 1996—sec. 25, Ch. 543, L. 1995.)*

History: **En. Sec. 9, Ch. 71, L. 1969; R.C.M. 1947, 69-6009(part); amd. Sec. 20, Ch. 251, L. 1979; amd. Sec. 29, Ch. 770, L. 1991.**

7-13-215. Powers and duties of board. Except for powers specifically reserved by the counties in the resolution creating the district, the board has the powers and duties provided in 75-10-112 as well as any additional powers granted the board in the resolution.

History: **En. Sec. 10, Ch. 71, L. 1969; amd. Sec. 3, Ch. 136, L. 1971; amd. Sec. 93, Ch. 349, L. 1974; R.C.M. 1947, 69-6010(part); amd. Sec. 10, Ch. 770, L. 1991; amd. Sec. 6, Ch. 543, L. 1995.**

Compiler's Comments

1995 Amendment: Chapter 543 at end inserted "as well as any additional powers granted the board in the resolution".

7-13-216. Implementation of program. The board may implement its proposed program a section at a time. If a program is implemented a section at a time, the fees may be levied only against that part of the district that is receiving the service. As the program is expanded throughout the district, that part of the district will start to pay the fee for service.

History: **En. Sec. 10, Ch. 71, L. 1969; amd. Sec. 3, Ch. 136, L. 1971; amd. Sec. 93, Ch. 349, L. 1974; R.C.M. 1947, 69-6010(9).**

7-13-217. Changes in district boundaries. The governing body of the district may by resolution make such changes in the boundaries of said district as they shall deem reasonable and proper, following the same procedures of notice and hearing outlined under 7-13-205 and 7-13-212.

History: **En. Sec. 11, Ch. 71, L. 1969; R.C.M. 1947, 69-6011.**

7-13-218. Role of county attorney. The county attorney shall be the legal advisor of the solid waste management districts and boards within the county of his jurisdiction and shall prosecute and defend all suits to which the districts may be a party. A district or board may employ special legal counsel to defend any such suits in the event a conflict of interest would prohibit such defense by the county attorney.

History: **En. Sec. 5, Ch. 136, L. 1971; amd. Sec. 1, Ch. 179, L. 1973; R.C.M. 1947, 69-6013; amd. Sec. 29, Ch. 770, L. 1991.**

7-13-219 through 7-13-230 reserved.

7-13-231. Authorization for charges for services. (1) To defray the cost of maintenance and operation of a solid waste management district, the board shall establish a fee for service, with approval of the county commissioners, provided that a public hearing has been held if written protest has been made as provided in 7-13-211. An increase in fees may not be approved and implemented unless notice of the increase is given as provided in 7-13-208(1) and (2) and an opportunity for protest is allowed as provided in 7-13-209 and 7-13-211.

(2) This fee must be assessed to all units in the district that are receiving a service, for the purpose of maintenance and operation of the district.

(3) An opportunity for protest or hearing is not required to increase fees for the purpose of paying fees imposed by the department of environmental quality under 75-10-115. Notice must be provided to all units of the rate or portion of any rate that is directly attributable to the fee imposed.

History: **En. Sec. 7, Ch. 71, L. 1969; amd. Sec. 2, Ch. 136, L. 1971; amd. Sec. 48, Ch. 391, L. 1973; R.C.M. 1947, 69-6007(part); amd. Sec. 5, Ch. 464, L. 1981; amd. Sec. 1, Ch. 643, L. 1991; amd. Sec. 29, Ch. 770, L. 1991; amd. Sec. 26, Ch. 418, L. 1995.**

Compiler's Comments

1995 Amendment: Chapter 418 in (3), in first sentence, substituted "department of environmental quality" for "department of health and environmental sciences"; and made minor changes in style. Amendment effective July 1, 1995.

7-13-232. Determination of service charge. (1) The board may establish, by resolution, rates for service charges, which may not be less than the actual cost of providing services. For solid waste management districts other than joint districts, the rates must be subject to the approval of the county commissioners.

(2) Service charges may take into account:

(a) the character, kind, and quality of service; and

(b) the cost of providing the service, including but not limited to depreciation and the payment of principal and interest on money borrowed by the district for the acquisition and improvement of facilities and equipment.

(3) Service charges may be assessed per family residential unit or based on the size of a vehicle used to dispose of the waste; the volume or weight of the waste; or the cost, incentives, or penalties applicable to waste management practices.

(4) The initial rate for any solid waste district or joint solid waste management district may not exceed the rate provided in the resolution creating the district.

(5) Fees for mobile home park accounts must be paid by the registered owner of each mobile home in the mobile home park.

(6) A notice of intention to enact a resolution to increase rates must be published as provided in 7-1-4128, and the district shall hold a public hearing prior to the meeting at which the resolution is considered.

History: En. Sec. 7, Ch. 71, L. 1969; amd. Sec. 2, Ch. 136, L. 1971; amd. Sec. 48, Ch. 391, L. 1973; R.C.M. 1947, 69-6007(part); amd. Sec. 1, Ch. 510, L. 1989; amd. Sec. 11, Ch. 770, L. 1991.

7-13-233. Procedure to collect service charge. (1) The service charge may be imposed for:

(a) any fiscal year for which the district establishes a budget or incurs costs related to planning or constructing a solid waste management facility; or

(b) services to begin within 12 months.

(2) The board shall certify to the county commissioners of the county served by the solid waste management district the service charge needed for the current fiscal year, the due but unpaid service charges, and a description of the property against which the service charges are to be levied.

(3) The department of revenue shall ensure that the amount of the service charge is placed on property tax notices and that the service charge is collected with property taxes.

(4) The board may establish a system for collecting service charges other than by tax notices to property owners issued by the department of revenue. The board may collect the service charge more often than property taxes are collected.

(5) If not paid, the service charge becomes delinquent and becomes a lien on the property, subject to the same penalties and the same rate of interest as property taxes.

History: En. Sec. 7, Ch. 71, L. 1969; amd. Sec. 2, Ch. 136, L. 1971; amd. Sec. 48, Ch. 391, L. 1973; R.C.M. 1947, 69-6007(part); amd. Sec. 12, Ch. 770, L. 1991; amd. Sec. 16, Ch. 27, Sp. L. November 1993.

7-13-234. Disposition and administration of proceeds. (1) All fees and other money received by the district shall be placed in a separate fund with the county treasurer of such county and shall be used solely for the purpose for which said solid waste management district was created.

(2) Warrants upon such funds shall be drawn by the board of county commissioners upon presentation of claims approved by the board.

History: En. Sec. 7, Ch. 71, L. 1969; amd. Sec. 2, Ch. 136, L. 1971; amd. Sec. 48, Ch. 391, L. 1973; R.C.M. 1947, 69-6007(part); amd. Sec. 29, Ch. 770, L. 1991.

7-13-235. Installment payments for capital improvements. To defray the initial cost of purchasing land and equipment, payments may be spread over a term of not to exceed 10 years.

History: En. Sec. 8, Ch. 71, L. 1969; R.C.M. 1947, 69-6008; amd. Sec. 13, Ch. 770, L. 1991.

7-13-236. Revenue bonds and obligations. (1) The commissioners may issue revenue bonds, including refunding bonds, or borrow money for the acquisition of property, construction of improvements, or purchase of equipment or to pay costs related to planning, designing, and financing a solid waste management system.

(2) Revenue bonds may be issued in a form and upon terms as provided in 7-7-2501.

(3) Bonds or loans may be payable from any revenue of the solid waste management district, including revenue from:

(a) service charges authorized in 7-13-233;

(b) grants or contributions from the state or federal government; or

(c) other sources.

History: En. Sec. 14, Ch. 770, L. 1991; amd. Sec. 1, Ch. 206, L. 1993.

7-13-237. Solid waste management district bonds authorized. (1) With the approval of the board of county commissioners, a solid waste management district may borrow money by the issuance of its bonds to:

(a) provide funds for payment of part or all of the cost of acquisition of property, construction of improvements, and purchase of equipment;

(b) provide an adequate working capital; and

(c) pay costs related to the planning, designing, and financing of a solid waste management system.

(2) The amount of bonds issued for the purposes provided for in subsection (1) and outstanding at any time may not exceed 22.5% of the taxable value of the property in the district as ascertained by the last assessment for state and county taxes prior to the issuance of the bonds.

(3) Each year at the time of levying county taxes, the board of county commissioners shall fix and levy a tax upon all property within the district sufficient to raise the amount necessary for the payment of bonded indebtedness.

(4) The bonds must be authorized, sold, and issued and provisions must be made for their payment in the manner and subject to the conditions and limitations prescribed for bonds of school districts in Title 20, chapter 9, part 4.

History: En. Sec. 15, Ch. 770, L. 1991.

7-13-238 through 7-13-240 reserved.

7-13-241. Repealed. Sec. 28, Ch. 770, L. 1991.

History: En. Sec. 4, Ch. 136, L. 1971; R.C.M. 1947, 69-6012(part); amd. Sec. 21, Ch. 251, L. 1979.

7-13-242. Repealed. Sec. 28, Ch. 770, L. 1991.

History: En. Sec. 4, Ch. 136, L. 1971; R.C.M. 1947, 69-6012(part).

7-13-243. Repealed. Sec. 28, Ch. 770, L. 1991.

History: En. Sec. 7, Ch. 71, L. 1969; amd. Sec. 2, Ch. 136, L. 1971; amd. Sec. 48, Ch. 391, L. 1973; R.C.M. 1947, 69-6007(part).

Part 3

Joint Solid Waste Management Districts

7-13-301. Purpose. To provide safe, efficient, and effective management of solid waste, two or more counties are authorized to cooperate in the creation of a joint solid waste district. A joint solid waste district is a political subdivision of the state for the purposes of the Municipal Finance Consolidation Act of 1983 as provided in 17-5-1602 and for solid waste management services as provided in 75-10-112.

History: En. Sec. 16, Ch. 770, L. 1991.

7-13-302. Definitions. As used in this part, the following definitions apply:

(1) "Board" means the board of directors as provided in 7-13-305.

(2) "Counties" means the commissioners of the counties creating the joint district.

(3) "Joint district" means a joint solid waste district created through the procedures outlined in this part.

History: En. Sec. 17, Ch. 770, L. 1991.

7-13-303. Creation of joint district. Two or more counties may create a joint solid waste district through the procedures described in 7-13-203 through 7-13-212.

History: En. Sec. 18, Ch. 770, L. 1991.

7-13-304. Municipalities authorized to contract with joint districts. Joint districts may enter into agreements to provide solid waste disposal services but not collection services to municipalities located in adjoining counties that do not participate in the district. An agreement is subject to the approval of the county commissioners in the county in which the municipality is located.

History: En. Sec. 19, Ch. 770, L. 1991.

7-13-305. Board of directors. (1) The board of a joint district must be appointed by the counties.

(2) The county commissioners shall appoint to the board one commissioner from each county, a representative of each incorporated city or town, a representative of each county or city board of health, and any other representatives agreed to by the commissioners of all the counties creating the joint district.

(3) A municipality that contracts for solid waste services with a joint district but that is not located in the counties creating the joint district may be represented on the board as provided in the agreement with the joint district.

(4) The board may provide for an executive committee that has the authority to exercise all powers of the joint district, except that the entire board shall meet at least once a year to elect officers and select the executive committee. An executive committee must include at least one representative from each of the counties.

(5) The board has all powers and duties provided in 75-10-112.

History: En. Sec. 20, Ch. 770, L. 1991.

7-13-306. Administration of funds in joint district. Fees and other money collected by a joint district may be administered either by entering into an agreement with the county treasurer's office of one of the participating counties or through a fund established and administered by the board. Fees received by a county treasurer must be promptly deposited into funds and accounts established by the joint district.

History: En. Sec. 21, Ch. 770, L. 1991.

7-13-307. Service charges. Service charges must be established and collected in the manner provided in 7-13-231 through 7-13-233.

History: En. Sec. 22, Ch. 770, L. 1991.

7-13-308. Revenue bonds and obligations. (1) A joint district may borrow money for any purpose provided in this part and issue bonds, including refunding bonds, in a form and upon terms as it may determine, payable from any revenue of the joint district, including revenue from:

(a) service charges authorized in 7-13-307;

(b) grants or contributions from the state or federal government; or

(c) other sources.

(2) The bonds may be issued by resolution of the joint district without an election and without any limitation of the amount, except that bonds may not be issued at any time if the total amount of principal and interest to become due in any year on the bonds and on any then-outstanding bonds for which revenue from the same source or sources is pledged exceeds the amount of the revenue to be received in that year as estimated in the resolution authorizing the issuance of the bonds. The board shall take all action necessary and possible to impose, maintain, and collect rates, charges, rentals, and taxes, if any are pledged, sufficient to make the revenue from the pledged source in a year at least equal to the amount of the principal and interest due in that year.

(3) The bonds may be sold at public or private sale and may bear interest as provided in 17-5-102. Except as otherwise provided in this part, bonds issued pursuant to this part by a joint district may be payable in principal and interest solely from revenues of the joint district and must state on their face the applicable limitations or restrictions regarding the source from which the principal and interest are payable.

(4) Bonds issued by a joint district under this part are issued for an essential public and governmental purpose by a political subdivision within the meaning of 15-30-111(2)(a).

(5) For the security of any bond, the joint district may by resolution make and enter into any covenant, agreement, or indenture. The sums required from time to time to pay principal and interest and to create and maintain a reserve for the bonds may be paid from any revenue referred to in this part prior to the payment of current costs of operation and maintenance of the solid waste management system.

History: En. Sec. 23, Ch. 770, L. 1991; amd. Sec. 2, Ch. 206, L. 1993.

7-13-309. Joint district bonds authorized. (1) Upon approval of the board of directors of the joint district, a joint district may borrow money by the issuance of its bonds to:

(a) provide funds for payment of part or all of the cost of acquisition of property, construction of improvements, and purchase of equipment;

(b) provide an adequate working capital; and

(c) pay costs related to the planning, designing, and financing of a solid waste management system.

(2) The amount of bonds issued for the purposes provided in subsection (1) and outstanding at any time may not exceed 22.5% of the taxable value of the property in the joint district as ascertained by the last assessment for state and county taxes prior to the issuance of the bonds.

(3) Each year at the time of levying county taxes, the board of county commissioners of each county in the joint district shall fix and levy a tax upon all property in the county within the joint district that is sufficient to raise the

amount certified by the board of directors of the joint district for payment of bonded indebtedness of the district.

(4) The bonds must be authorized, sold, and issued and provisions must be made for their payment in the manner and subject to the conditions and limitations prescribed for bonds of school districts in Title 20, chapter 9, part 4. The issuance of the bonds must be approved in each county by the joint district electorate voting on the question.

History: En. Sec. 24, Ch. 770, L. 1991.

7-13-310. Debt service fund. A joint district may create a debt service fund and accumulate in the fund a sum not to exceed an amount equal to the total amount of principal and interest due in any 2 subsequent years.

History: En. Sec. 25, Ch. 770, L. 1991.

7-13-311. Tax exemption. Any property in this state acquired by a joint district for purposes of operating a solid waste management system and any income derived by the joint district are exempt from taxation to the same extent as other property used for public purposes.

History: En. Sec. 26, Ch. 770, L. 1991.

Parts 4 through 20 reserved

Part 21

General Provisions Related to County Utility Services

7-13-2101. Authority to permit construction of utility mains. The board of county commissioners shall have the power and authority to grant to any person, association, or corporation the right to construct and maintain in, along, and under any public road or highway within such county, any pipeline for the conveyance of natural or artificial gas, water, or any other substance for the use of any county, city, or town or the inhabitants thereof.

History: En. Sec. 1, Ch. 75, L. 1927; re-en. Sec. 4476.1, R.C.M. 1935; R.C.M. 1947, 16-1114(part).

7-13-2102. Constructed mains not to interfere with use of road. When constructed, such pipeline shall not now or in the future interfere with the surface use of such road or highway.

History: En. Sec. 1, Ch. 75, L. 1927; re-en. Sec. 4476.1, R.C.M. 1935; R.C.M. 1947, 16-1114(part).

7-13-2103. Payment of damages and restoration of road. The person, association, or corporation owning or constructing such pipeline:

(1) shall compensate such county for any and all damages done to any such road or highway in the laying, construction, or maintenance of such pipeline; and

(2) shall promptly restore any such road or highway to its former condition of usefulness, without interference with the traffic thereon.

History: En. Sec. 1, Ch. 75, L. 1927; re-en. Sec. 4476.1, R.C.M. 1935; R.C.M. 1947, 16-1114(part).

7-13-2104. Scope of prior sections. Nothing contained in 7-13-2101 through 7-13-2103 shall be construed as in any manner affecting any of the terms and provisions of Title 70, chapter 30.

History: En. Sec. 2, Ch. 75, L. 1927; re-en. Sec. 4476.2, R.C.M. 1935; R.C.M. 1947, 16-1115.

Part 22

County Water and/or Sewer Districts

Part Cross-References

Requirements of public utilities, Title 69, ch. 3, part 2.

Public Service Commission — ratemaking procedures, Title 69, ch. 3, part 3.

7-13-2201. Definitions. (1) The word "board" and the words "boards of directors" apply to the board of directors of the district.

(2) The term "county" means one or more counties and includes a city and county.

(3) The word "district", unless otherwise expressed or used, applies to a district formed under the provisions of this part and part 23. A district is a unit of local government separate and distinct from a municipality, but a district may be treated as a municipality when applying for a grant, a loan, or other financial assistance from the state.

(4) The term "municipality", as used in this part and part 23, includes a consolidated city and county, city, or town and includes all corporations organized for municipal purposes within the districts.

History: En. Sec. 32, Ch. 242, L. 1957; amd. Sec. 11, Ch. 167, L. 1965; amd. Sec. 1, Ch. 263, L. 1967; R.C.M. 1947, 16-4532(part); amd. Sec. 1, Ch. 160, L. 1993.

7-13-2202. Interpretation. Nothing in this part and part 23 shall be so construed as repealing or in any wise modifying the provisions of any other act relating to water or sewers or the supply of water to or the acquisition thereof by counties or municipalities within this state.

History: En. Sec. 32, Ch. 242, L. 1957; amd. Sec. 11, Ch. 167, L. 1965; amd. Sec. 1, Ch. 263, L. 1967; R.C.M. 1947, 16-4532(part).

7-13-2203. County water and/or sewer districts authorized. (1) A county water and/or sewer district may be organized and incorporated and managed as herein expressly provided and may exercise the powers herein expressly granted or necessarily implied.

(2) The people of any county or counties or portion of a city or a county or city and county or any combination of these political divisions, whether such portion includes unincorporated territory or not, in the state of Montana, may organize a county water and/or sewer district under the provisions of this part and part 23 by proceeding as therein provided.

History: (1)En. Sec. 1, Ch. 242, L. 1957; amd. Sec. 1, Ch. 263, L. 1967; Sec. 16-4501, R.C.M. 1947; (2)En. Sec. 2, Ch. 242, L. 1957; amd. Sec. 1, Ch. 167, L. 1965; amd. Sec. 1, Ch. 263, L. 1967; Sec. 16-4502, R.C.M. 1947; R.C.M. 1947, 16-4501, 16-4502.

7-13-2204. Petition to create water and/or sewer district. (1) A petition, which may consist of any number of separate instruments, shall be presented at a regular meeting of the board of county commissioners of the county in which the proposed district is located, signed by registered voters within the boundaries of the proposed district equal in number to at least 10% of the registered voters of the territory included in such proposed district.

(2) When the territory to be included in such proposed district lies in more than one county, a petition must be presented to the board of county commissioners of each county in which said territory lies. Each of said petitions must be signed by at least 10% of the registered voters of the territory within said county to be included within such proposed district.

(3) Such petition shall set forth and describe the proposed boundaries of such district and shall pray that the same be incorporated under the provisions of this part and part 23.

History: En. Sec. 3, Ch. 242, L. 1957; amd. Sec. 2, Ch. 167, L. 1965; amd. Sec. 1, Ch. 263, L. 1967; amd. Sec. 1, Ch. 296, L. 1977; R.C.M. 1947, 16-4503(part).

7-13-2205. Notice of petition — hearing required. (1) The text of the petition referred to in 7-13-2204 shall be published as provided in 7-1-2121 in every county in which said territory lies.

(2) When contained upon more than one instrument, one copy only of such petition need be published. No more than five of the names attached to said petition need appear in such publication of said petition and notice, but the number of signers shall be stated.

History: (1), (2)En. Sec. 3, Ch. 242, L. 1957; amd. Sec. 2, Ch. 167, L. 1965; amd. Sec. 1, Ch. 263, L. 1967; amd. Sec. 1, Ch. 296, L. 1977; Sec. 16-4503, R.C.M. 1947; (3)En. Sec. 4, Ch. 242, L. 1957; amd. Sec. 3, Ch. 167, L. 1965; Sec. 16-4504, R.C.M. 1947; R.C.M. 1947, 16-4503(part), 16-4504(part); amd. Sec. 20, Ch. 349, L. 1985.

7-13-2206. Hearing on petition — protest. (1) At the time for the hearing, the board of county commissioners shall hear the petition and those appearing thereon, together with such written protests as shall have been filed with the county clerk and recorder prior to such hearing by or on behalf of owners of taxable property situated within the boundaries of the proposed district within the county. The board of county commissioners may adjourn such hearing from time to time, not exceeding 4 weeks in all.

(2) Upon such hearing of said petition, the board of county commissioners shall determine whether or not said petition complies with the requirements of the provisions of this part and part 23 and for that purpose must hear all competent and relevant testimony offered in support of or in opposition thereto. Such determination shall be entered upon the minutes of said board of county commissioners.

History: (1)En. Sec. 4, Ch. 242, L. 1957; amd. Sec. 3, Ch. 167, L. 1965; Sec. 16-4504, R.C.M. 1947; (2)En. Sec. 5, Ch. 242, L. 1957; amd. Sec. 4, Ch. 167, L. 1965; amd. Sec. 1, Ch. 263, L. 1967; amd. Sec. 1, Ch. 257, L. 1974; amd. Sec. 1, Ch. 521, L. 1975; amd. Sec. 2, Ch. 296, L. 1977; Sec. 16-4505, R.C.M. 1947; R.C.M. 1947, 16-4504(part), 16-4505(part).

7-13-2207. Effect of certain irregularities. No defect in the contents of the petition or in the title to or form of the notice or signatures or lack of signatures thereto shall vitiate any proceedings thereon, provided such petition or petitions have a sufficient number of qualified signatures attached thereto.

History: En. Sec. 4, Ch. 242, L. 1957; amd. Sec. 3, Ch. 167, L. 1965; R.C.M. 1947, 16-4504(part).

7-13-2208. Decision on petition — election required. (1) On the final hearing, the board of county commissioners shall make any changes in the proposed boundaries within the county that are considered advisable and shall define and establish the boundaries. The board of county commissioners may not modify the boundaries in a manner that would exclude from the proposed district any territory that would be benefited by the formation of the district. Land that will not, in the judgment of the board of county commissioners, be benefited by the district may not be included within the proposed district.

(2) Upon the final determination of the boundaries of the district, the board of county commissioners of each county in which the district lies shall give notice of an election to be held in the proposed district for the purpose of determining whether or not the district is to be incorporated. The election must be held in conjunction with a regular or primary election.

History: (1)En. Sec. 4, Ch. 242, L. 1957; amd. Sec. 3, Ch. 167, L. 1965; Sec. 16-4504, R.C.M. 1947; (2)En. Sec. 5, Ch. 242, L. 1957; amd. Sec. 4, Ch. 167, L. 1965; amd. Sec. 1, Ch. 263, L. 1967; amd. Sec. 1, Ch. 257, L. 1974; amd. Sec. 1, Ch. 521, L. 1975; amd. Sec. 2, Ch. 296, L. 1977; Sec. 16-4505, R.C.M. 1947; R.C.M. 1947, 16-4504(part), 16-4505(part); amd. Sec. 18, Ch. 250, L. 1985; amd. Sec. 42, Ch. 387, L. 1995.

Compiler's Comments

1995 Amendment: Chapter 387 in (2), in second sentence, substituted "The election must be held in conjunction with a regular or primary election" for "The date of the election shall be no less than 75 or more than 90 days from the date of the final hearing of such petition"; and made minor changes in style.

7-13-2209. Application to include benefited lands. Any person whose lands are benefited by such district may, in the discretion of said board of county commissioners, have such lands included within said proposed district upon his application to the board of county commissioners of the county in which his lands be.

History: En. Sec. 4, Ch. 242, L. 1957; amd. Sec. 3, Ch. 167, L. 1965; R.C.M. 1947, 16-4504(part).

7-13-2210. Notice of election. (1) The notice of election required by 7-13-2208 shall describe the boundaries established and shall state the proposed name of the proposed incorporation (which name shall contain the words ".... County water and/or sewer district").

(2) This notice shall be published as provided in 13-1-108.

History: En. Sec. 5, Ch. 242, L. 1957; amd. Sec. 4, Ch. 167, L. 1965; amd. Sec. 1, Ch. 263, L. 1967; amd. Sec. 1, Ch. 257, L. 1974; amd. Sec. 1, Ch. 521, L. 1975; amd. Sec. 2, Ch. 296, L. 1977; R.C.M. 1947, 16-4505(part); amd. Sec. 319, Ch. 571, L. 1979.

7-13-2211. Conduct of election on question of creating district. (1) The election on the question of creating the district shall be conducted, the vote canvassed, and the result declared in the same manner as provided by Title 13 in respect to general elections, so far as it is applicable, except as otherwise provided in this part and part 23.

(2) At the election the proposition to be submitted shall be: "Shall the proposition to organize .... County water and/or sewer district under parts 22 and 23 of chapter 13 of Title 7 be adopted?"

History: En. Sec. 5, Ch. 242, L. 1957; amd. Sec. 4, Ch. 167, L. 1965; amd. Sec. 1, Ch. 263, L. 1967; amd. Sec. 1, Ch. 257, L. 1974; amd. Sec. 1, Ch. 521, L. 1975; amd. Sec. 2, Ch. 296, L. 1977; R.C.M. 1947, 16-4505(part); amd. Sec. 320, Ch. 571, L. 1979.

7-13-2212. Qualifications to vote on question of creating district. (1) Except as provided in subsection (2), no individual shall be entitled to vote at any election under the provisions of this part and part 23 unless such individual possesses all the qualifications required of electors under the general election laws of the state and is a resident of the proposed district or the owner of taxable real property located within the county in which he proposes to vote and situated within the boundaries of the proposed district.

(2) An individual who is the owner of such real property need not possess the qualifications required of an elector in 13-1-111(1)(c), provided that such elector is qualified if he is registered to vote in any state of the United States and files proof of such registration with the election administrator.

History: En. Sec. 5, Ch. 242, L. 1957; amd. Sec. 4, Ch. 167, L. 1965; amd. Sec. 1, Ch. 263, L. 1967; amd. Sec. 1, Ch. 257, L. 1974; amd. Sec. 1, Ch. 521, L. 1975; amd. Sec. 2, Ch. 296, L. 1977; R.C.M. 1947, 16-4505(part); amd. Sec. 321, Ch. 571, L. 1979.

7-13-2213. Effect of insufficient favorable vote. In case less than a majority of the votes cast are in favor of said proposition, the organization fails but without prejudice to renewing proceedings at any time in the future.

History: En. Sec. 5, Ch. 242, L. 1957; amd. Sec. 4, Ch. 167, L. 1965; amd. Sec. 1, Ch. 263, L. 1967; amd. Sec. 1, Ch. 257, L. 1974; amd. Sec. 1, Ch. 521, L. 1975; amd. Sec. 2, Ch. 296, L. 1977; R.C.M. 1947, 16-4505(part).

7-13-2214. Order creating district upon sufficient favorable vote. (1) If at least 40% of all registered voters residing within the proposed district have voted and if a majority of the votes cast at such election in each municipal corporation or part thereof and in the unincorporated territory of each county included in such proposed district shall be in favor of organizing such county district, said board of county commissioners of each such county shall, by an order entered on its minutes, declare the territory enclosed within the proposed boundaries duly organized as a county water and/or sewer district under the name theretofore designated.

(2) The election administrator of each such county shall immediately cause to be filed with the secretary of state and shall cause to be recorded in the office of the clerk and recorder of the county or each county in which such district is situated a certificate stating that such a proposition was adopted.

History: En. Sec. 5, Ch. 242, L. 1957; amd. Sec. 4, Ch. 167, L. 1965; amd. Sec. 1, Ch. 263, L. 1967; amd. Sec. 1, Ch. 257, L. 1974; amd. Sec. 1, Ch. 521, L. 1975; amd. Sec. 2, Ch. 296, L. 1977; R.C.M. 1947, 16-4505(part); amd. Sec. 2, Ch. 591, L. 1991.

7-13-2215. Certificate of incorporation from secretary of state. (1) Upon the receipt of the certificate referred to in 7-13-2214(2), the secretary of state shall, within 10 days, issue his certificate reciting that the district (naming it) has been duly incorporated according to the laws of the state of Montana. A copy of such certificate shall be transmitted to and filed with the county clerk of the county or counties in which such district is situated.

(2) From and after the date of such certificate, the district named therein shall be deemed incorporated, with all the rights, privileges, and powers set forth in this part and part 23 and necessarily incident thereto.

History: En. Sec. 5, Ch. 242, L. 1957; amd. Sec. 4, Ch. 167, L. 1965; amd. Sec. 1, Ch. 263, L. 1967; amd. Sec. 1, Ch. 257, L. 1974; amd. Sec. 1, Ch. 521, L. 1975; amd. Sec. 2, Ch. 296, L. 1977; R.C.M. 1947, 16-4505(part).

7-13-2216. Limitations on lawsuits challenging formation of district. (1) A finding of the board of county commissioners in favor of the genuineness and sufficiency of the petition and notice shall be final and conclusive against all persons except the state of Montana upon suit commenced by the attorney general. Any such suit must be commenced within 1 year after the order of the board of county commissioners declaring such district organized as herein provided and not otherwise.

(2) Any proceeding wherein the validity of the incorporation of the district is denied shall be commenced within 3 months from the date of the certificate of incorporation, otherwise said incorporation and the legal existence of said district and all proceedings in respect thereto shall be held to be valid and in every respect legal and incontestable.

History: (1)En. Sec. 5, Ch. 242, L. 1957; amd. Sec. 4, Ch. 167, L. 1965; amd. Sec. 1, Ch. 263, L. 1967; amd. Sec. 1, Ch. 257, L. 1974; amd. Sec. 1, Ch. 521, L. 1975; amd. Sec. 2, Ch. 296, L. 1977; Sec. 16-4505, R.C.M. 1947; (2)En. Sec. 13, Ch. 242, L. 1957; amd. Sec. 1, Ch. 263, L. 1967; Sec. 16-4513, R.C.M. 1947; R.C.M. 1947, 16-4505(part), 16-4513(part).

7-13-2217. General powers of water and/or sewer district. (1) Any district incorporated as provided in this part and part 23 shall have power to:

(a) have perpetual succession;

(b) sue and be sued, except as otherwise provided herein or by law, in all actions and proceedings in all courts and tribunals of competent jurisdiction;

(c) adopt a seal and alter it at pleasure;

(d) take by grant, purchase, gift, devise, or lease and to hold, use, enjoy, and to lease or dispose of real and personal property of every kind, within or without the district, necessary to the full exercise of its powers;

(e) make contracts, employ labor, and do all acts necessary for the full exercise of the foregoing powers.

(2) The powers enumerated in this part and part 23 shall, except as otherwise provided in this part and part 23, be exercised by the board of directors provided for in 7-13-2231 and elected and appointed as described in this part and part 23.

History: (1)En. Sec. 14, Ch. 242, L. 1957; amd. Sec. 1, Ch. 263, L. 1967; Sec. 16-4514, R.C.M. 1947; (2)En. Sec. 15, Ch. 242, L. 1957; Sec. 16-4515, R.C.M. 1947; R.C.M. 1947, 16-4514(part), 16-4515.

Cross-References

Procurement of architectural, engineering, and land surveying services by governmental entities, Title 18, ch. 8, part 2.

7-13-2218. District powers related to water and sewer projects. Any district incorporated as provided in this part may:

(1) construct, purchase, lease, or otherwise acquire and operate and maintain water rights, waterworks, sanitary sewerworks, storm sewerworks, canals, conduits, reservoirs, lands, and rights useful or necessary to store, conserve, supply, produce, convey, or drain water or sewage for purposes beneficial to the district. Beneficial purposes include but are not limited to flood prevention, flood control, irrigation, drainage, municipal and industrial water supplies, domestic water supplies, wildlife, recreation, pollution abatement, livestock water supply, and other similar purposes.

(2) if the incorporators of the district are members of a private, nonprofit water association that was formed under the laws of this state, acquire by eminent domain from that water association any type of property referred to in this section;

(3) store water for the benefit of the district; conserve water for future use; appropriate, acquire, and conserve water and water rights for the purposes of the district; commence, maintain, intervene in, and compromise, in the name

of the district, and assume the costs of any action or proceeding involving or affecting the ownership or use of waters, water rights, or sewer rights within the district used or useful for any purpose of the district or a benefit to any land situated in the district;

(4) commence, maintain, intervene in, defend, and compromise actions and proceedings to prevent interference with or diminution of the natural flow of any stream or natural subterranean supply of waters used or useful for any purpose of the district or a common benefit to the lands within the district or its inhabitants;

(5) commence, maintain, and defend actions and proceedings to prevent any interference with the waters or rights referred to in this section as may endanger the inhabitants or lands of the district;

(6) lease from any person, firm, or public or private corporation, with the privilege of purchase or otherwise, existing water rights, waterworks, sewerworks, canals, or reservoir systems; and carry on and maintain them;

(7) sell water or the use of water for household or domestic or other similar purposes or sell sewer service and, whenever there is a surplus of water or sewerworks capacity, sell or otherwise dispose of the water or sewerworks capacity to municipalities or towns or to consumers located within or outside the boundaries of the district;

(8) retain the services of architects and engineers for designing, preparing a feasibility study for, and drawing plans and specifications of a water or sewer system for the district, with the cost of these services apportioned and assigned against properties in the district; and

(9) establish, by ordinance or resolution, rules and regulations for the operation, maintenance, use, and availability of any of its systems or improvements, including but not limited to connection procedures, service termination, and payment of rates and charges, including penalties and interest charges for delinquent accounts.

History: En. Sec. 14, Ch. 242, L. 1957; amd. Sec. 1, Ch. 263, L. 1967; R.C.M. 1947, 16-4514(5) thru (7); amd. Sec. 1, Ch. 394, L. 1989; amd. Sec. 11, Ch. 645, L. 1991; amd. Sec. 1, Ch. 518, L. 1995.

Compiler's Comments

1995 Amendment: Chapter 518 inserted (8) allowing the hiring of architects and engineers for water or sewer systems, with the costs of their services apportioned against the properties in the district; and inserted (9) allowing rules for the operation, maintenance, use, and availability of systems and improvements. Amendment effective April 25, 1995.

Cross-References

Procurement of architectural, engineering, and land surveying services by governmental entities, Title 18, ch. 8, part 2.

7-13-2219. Power to construct works across roads and other obstacles. The board of directors shall have power to construct works across any stream of water, watercourse, street, avenue, highway, railway, canal, ditch, or flume which the route of said works may intersect or cross; provided such works are constructed in such manner as to afford security for life and property; and said board shall restore the crossings and intersections to their former state as near as may be or in a manner not to have impaired unnecessarily their usefulness.

History: En. Sec. 24, Ch. 242, L. 1957; R.C.M. 1947, 16-4524(part).

7-13-2220. Right-of-way across state lands. The right-of-way is given, dedicated, and set apart to locate, construct, and maintain district works over and through any lands which are the property of this state, and the district has the same rights and privileges relating to the right-of-way as are granted to municipalities.

History: En. Sec. 24, Ch. 242, L. 1957; R.C.M. 1947, 16-4524(part); amd. Sec. 22, Ch. 251, L. 1979.

7-13-2221. Powers related to district finances. Any district incorporated as provided in this part shall have power to:

(1) accept funds and property or other assistance, financial or otherwise, from federal, state, and other public or private sources for the purposes of aiding the construction or maintenance of water or sewer development projects;

(2) cooperate and contract with the state or federal government or any department or agency thereof in furnishing assurances for and meeting local cooperation requirements of any project involving control, conservation, and use of water;

(3) borrow money and incur indebtedness and issue bonds or other evidence of such indebtedness; also refund or retire any indebtedness or lien that may exist against the district or property thereof;

(4) cause taxes to be levied in the manner provided for in this part and part 23 for the purpose of paying any obligation of the district and to accomplish the purposes of this part and part 23 in the manner provided in this part and part 23.

History: En. Sec. 14, Ch. 242, L. 1957; amd. Sec. 1, Ch. 263, L. 1967; R.C.M. 1947, 16-1514(8) thru (10).

7-13-2222. Applicability of general election laws. Except as otherwise provided in this part and part 23, the provisions of the law relating to the qualifications of electors, the manner of voting, the duties of election officers, the canvassing of returns, and all other particulars in respect to the management of general elections, so far as they may be applicable, shall govern all district elections.

History: En. Sec. 8, Ch. 242, L. 1957; amd. Sec. 1, Ch. 258, L. 1959; amd. Sec. 7, Ch. 167, L. 1965; amd. Sec. 1, Ch. 263, L. 1967; amd. Sec. 4, Ch. 257, L. 1974; amd. Sec. 3, Ch. 521, L. 1975; R.C.M. 1947, 16-4508(part).

Cross-References

General election laws, Title 13.

7-13-2223. Repealed. Sec. 407, Ch. 571, L. 1979.

History: (1)En. Sec. 7, Ch. 242, L. 1957; amd. Sec. 6, Ch. 167, L. 1965; amd. Sec. 1, Ch. 263, L. 1967; amd. Sec. 3, Ch. 257, L. 1974; amd. Sec. 2, Ch. 310, L. 1975; amd. Sec. 2, Ch. 521, L. 1975; amd. Sec 3, Ch. 296, L. 1977; Sec. 16-4507, R.C.M. 1947; (2)En. Sec. 13, Ch. 242, L. 1957; amd. Sec. 1, Ch. 263, L. 1967; Sec. 16-4513, R.C.M. 1947; (3)En. Sec. 21, Ch. 242, L. 1957; Sec. 16-4521, R.C.M. 1947; R.C.M. 1947, 16-4507(22), 16-4513(part), 16-4521(part); amd. Sec. 23, Ch. 251, L. 1979.

7-13-2224. Repealed. Sec. 2, Ch. 538, L. 1979; Sec. 407, Ch. 571, L. 1979.

History: En. Sec. 6, Ch. 242, L. 1957; amd. Sec. 5, Ch. 167, L. 1965; amd. Sec. 1, Ch. 263, L. 1967; amd. Sec. 2, Ch. 257, L. 1974; amd. Sec. 1, Ch. 310, L. 1975; R.C.M. 1947, 16-4506(part).

7-13-2225. Combination of elections. (1) The board of county commissioners in its discretion may combine in one election the election on the formation of the district, the election of directors, and the election on incurring a bonded indebtedness so that the electors of the district may vote on all of these matters on the same date and at the same time.

(2) If the elections are combined, the board of county commissioners shall so declare by resolution containing the provisions required by 7-13-2321. If the elections are combined, the notice of the election shall contain the names of the candidates and the details concerning the bonded indebtedness.

(3) Candidates for the office of director shall be nominated in the manner required by 7-13-2241 and 7-13-2246.

History: En. 16-4535 by Sec. 1, Ch. 109, L. 1969; R.C.M. 1947, 16-4535; amd. Sec. 41, Ch. 575, L. 1981; amd. Sec. 10, Ch. 220, L. 1985; amd. Sec. 3, Ch. 591, L. 1991.

7-13-2226 through 7-13-2230 reserved.

7-13-2231. District to be governed by board of directors. (1) At an election to be held within a district under the provisions of this part and part 23 and the laws governing general elections not inconsistent this part and part 23, the district shall elect a board of directors. The election must be held in conjunction with the next regular or primary election.

(2) The board of directors is the governing body of the district.

History: (1)En. Sec. 6, Ch. 242, L. 1957; amd. Sec. 5, Ch. 167, L. 1965; amd. Sec. 1, Ch. 263, L. 1967; amd. Sec. 2, Ch. 257, L. 1974; amd. Sec. 1, Ch. 310, L. 1975; Sec. 16-4506, R.C.M. 1947; (2)En. Sec. 10, Ch. 242, L. 1957; amd. Sec. 1, Ch. 263, L. 1967; Sec. 16-4510, R.C.M. 1947; R.C.M. 1947, 16-4506(part), 16-4510(part); amd. Sec. 322, Ch. 571, L. 1979; amd. Sec. 43, Ch. 387, L. 1995.

Compiler's Comments

1995 Amendment: Chapter 387 in first sentence of (1), after "district", substituted "shall elect a board" for "thus organized shall proceed, within 120 days after its formation, to the election of a board" and inserted "The election must be held in conjunction with the next regular or primary election"; and made minor changes in style.

7-13-2232. Composition of board of directors. (1) If there are no municipalities within the boundaries of said district, the board of directors shall consist of five members or three members if there are 10 or less qualified electors in the district.

(2) In all cases where the boundaries of such district include any municipality or municipalities, said board, in addition to said five or three directors to be elected as aforesaid, shall consist of one additional director for each of said municipalities within such district, each such additional director to be appointed by the mayor of the municipality for which said additional director is allowed, and, if there be any unincorporated territory within said district, one additional director to be appointed by the board of county commissioners of each county containing such territory.

History: En. Sec. 6, Ch. 242, L. 1957; amd. Sec. 5, Ch. 167, L. 1965; amd. Sec. 1, Ch. 263, L. 1967; amd. Sec. 2, Ch. 257, L. 1974; amd. Sec. 1, Ch. 310, L. 1975; R.C.M. 1947, 16-4506(part).

7-13-2233. Qualifications of directors. Any director so elected or appointed shall be an owner or lessee of real property within said district or a resident therein.

History: En. Sec. 6, Ch. 242, L. 1957; amd. Sec. 5, Ch. 167, L. 1965; amd. Sec. 1, Ch. 263, L. 1967; amd. Sec. 2, Ch. 257, L. 1974; amd. Sec. 1, Ch. 310, L. 1975; R.C.M. 1947, 16-4506(part).

7-13-2234. Term of office. (1) All directors, elected or appointed, shall hold office until the election and qualification or appointment and qualification of their successors.

(2) Except as otherwise provided, the term of office of directors elected under the provisions of this part and part 23 shall be 4 years from and after the date of their election.

(3) Directors elected at the first regular election under this part and part 23 after July 1, 1979, shall serve as follows:

(a) In districts requiring the election of five elected directors, three directors shall serve for a term of 2 years and two for a term of 4 years.

(b) In districts requiring the election of three elected directors, one director shall serve for a term of 2 years and two for a term of 4 years.

(c) At their first meeting, the directors shall determine by lot which of them shall serve the term or terms less than 4 years. Every term thereafter shall be for a period of 4 years.

(4) The term of office of directors appointed by the mayor or mayors or by the board of county commissioners shall be 6 years from and after the date of appointment. Directors to be first appointed under the provisions of this part and part 23 shall be appointed within 90 days after the formation of the district.

(5) The first regular election for a district shall be held in November of the next odd-numbered year following the formation of the district.

History: En. Sec. 6, Ch. 242, L. 1957; amd. Sec. 5, Ch. 167, L. 1965; amd. Sec. 1, Ch. 263, L. 1967; amd. Sec. 2, Ch. 257, L. 1974; amd. Sec. 1, Ch. 310, L. 1975; R.C.M. 1947, 16-4506(part); amd. Sec. 1, Ch. 538, L. 1979; amd. Sec. 323, Ch. 571, L. 1979.

7-13-2235. Election and appointment procedure. The mode of nomination and election of all elective officers of such district to be voted for at any district election and the mode of appointment of a director by a mayor or a board of county commissioners shall be as provided in this part.

History: En. Sec. 7, Ch. 242, L. 1957; amd. Sec. 6, Ch. 167, L. 1965; amd. Sec. 1, Ch. 263, L. 1967; amd. Sec. 3, Ch. 257, L. 1974; amd. Sec. 2, Ch. 310, L. 1975; amd. Sec. 2, Ch. 521, L. 1975; amd. Sec. 3, Ch. 296, L. 1977; R.C.M. 1947, 16-4507(1); amd. Sec. 42, Ch. 575, L. 1981.

7-13-2236. General district election. (1) The election of directors of the district shall be held every 2 years with the election for local government officials provided for in 13-1-104(2).

(2) The election of directors of a district located in an unincorporated area may be conducted by mail ballot as provided in Title 13, chapter 19.

History: En. Sec. 6, Ch. 242, L. 1957; amd. Sec. 5, Ch. 167, L. 1965; amd. Sec. 1, Ch. 263, L. 1967; amd. Sec. 2, Ch. 257, L. 1974; amd. Sec. 1, Ch. 310, L. 1975; R.C.M. 1947, 16-4506(part); amd. Sec. 324, Ch. 571, L. 1979; amd. Sec. 28, Ch. 196, L. 1985; amd. Sec. 11, Ch. 220, L. 1985.

Cross-References

Combination of elections, 7-13-2225.

7-13-2237 through 7-13-2240. Repealed. Sec. 25, Ch. 591, L. 1991.

Compiler's Comments

Histories of Repealed Sections:

7-13-2237. En. Sec. 7, Ch. 242, L. 1957; amd. Sec. 6, Ch. 167, L. 1965; amd. Sec. 1, Ch. 263, L. 1967; amd. Sec. 3, Ch. 257, L. 1974; amd. Sec. 2, Ch. 310, L. 1975; amd. Sec. 2, Ch. 521, L. 1975; amd. Sec. 3, Ch. 296, L. 1977; R.C.M. 1947, 16-4507(2); amd. Sec. 388, Ch. 571, L. 1979.

7-13-2238. En. Sec. 7, Ch. 242, L. 1957; amd. Sec. 6, Ch. 167, L. 1965; amd. Sec. 1, Ch. 263, L. 1967; amd. Sec. 3, Ch. 257, L. 1974; amd. Sec. 2, Ch. 310, L. 1975; amd. Sec. 2, Ch. 521, L. 1975; amd. Sec. 3, Ch. 296, L. 1977; R.C.M. 1947, 16-4507(3), (4); amd. Sec. 325, Ch. 571, L. 1979.

7-13-2239. En. Sec. 7, Ch. 242, L. 1957; amd. Sec. 6, Ch. 167, L. 1965; amd. Sec. 1, Ch. 263, L. 1967; amd. Sec. 3, Ch. 257, L. 1974; amd. Sec. 2, Ch. 310, L. 1975; amd. Sec. 2, Ch. 521, L. 1975; amd. Sec. 3, Ch. 296, L. 1977; R.C.M.

1947, 16-4507(part); amd. Sec. 326, Ch. 571, L. 1979.

7-13-2240. En. Sec. 7, Ch. 242, L. 1957; amd. Sec. 6, Ch. 167, L. 1965; amd. Sec. 1, Ch. 263, L. 1967; amd. Sec. 3, Ch. 257, L. 1974; amd. Sec. 2, Ch. 310, L. 1975; amd. Sec. 2, Ch. 521, L. 1975; amd. Sec. 3, Ch. 296, L. 1977; R.C.M. 1947, 16-4507(part); amd. Sec. 327, Ch. 571, L. 1979.

7-13-2241. Filing of petition of nomination. (1) A petition of nomination, signed by at least five electors of the district for any one candidate, may be filed with the election administrator not earlier than 135 days or later than 75 days before the election. The election administrator shall endorse thereon the date upon which the petition was presented to him.

(2) If the district lies in more than one county, the petition for nomination shall be presented to the election administrator whose county contains the largest percentage of the territory of the district and the election administrator shall fulfill all duties assigned to election administrators in elections under this part and part 23.

(3) If the petition conforms to this section, the election administrator shall place the name of the petitioner on the ballot as a candidate for director of the district.

History: En. Sec. 7, Ch. 242, L. 1957; amd. Sec. 6, Ch. 167, L. 1965; amd. Sec. 1, Ch. 263, L. 1967; amd. Sec. 3, Ch. 257, L. 1974; amd. Sec. 2, Ch. 310, L. 1975; amd. Sec. 2, Ch. 521, L. 1975; amd. Sec. 3, Ch. 296, L. 1977; R.C.M. 1947, 16-4507(6); amd. Sec. 328, Ch. 571, L. 1979; amd. Sec. 19, Ch. 250, L. 1985; amd. Sec. 4, Ch. 591, L. 1991.

7-13-2242. Repealed. Sec. 25, Ch. 591, L. 1991.

History: En. Sec. 7, Ch. 242, L. 1957; amd. Sec. 6, Ch. 167, L. 1965; amd. Sec. 1, Ch. 263, L. 1967; amd. Sec. 3, Ch. 257, L. 1974; amd. Sec. 2, Ch. 310, L. 1975; amd. Sec. 2, Ch. 521, L. 1975; amd. Sec. 3, Ch. 296, L. 1977; R.C.M. 1947, 16-4507(part); amd. Sec. 329, Ch. 571, L. 1979; amd. Sec. 20, Ch. 250, L. 1985; amd. Sec. 20, Ch. 370, L. 1987.

7-13-2243. Assistance for election administrator. If necessary, the board of commissioners shall provide extra help to enable the election administrator to perform satisfactorily and promptly the duties imposed by this part.

History: En. Sec. 7, Ch. 242, L. 1957; amd. Sec. 6, Ch. 167, L. 1965; amd. Sec. 1, Ch. 263, L. 1967; amd. Sec. 3, Ch. 257, L. 1974; amd. Sec. 2, Ch. 310, L. 1975; amd. Sec. 2, Ch. 521, L. 1975; amd. Sec. 3, Ch. 296, L. 1977; R.C.M. 1947, 16-4507(part); amd. Sec. 330, Ch. 571, L. 1979; amd. Sec. 43, Ch. 575, L. 1981.

7-13-2244. Repealed. Sec. 25, Ch. 591, L. 1991.

History: En. Sec. 7, Ch. 242, L. 1957; amd. Sec. 6, Ch. 167, L. 1965; amd. Sec. 1, Ch. 263, L. 1967; amd. Sec. 3, Ch. 257, L. 1974; amd. Sec. 2, Ch. 310, L. 1975; amd. Sec. 2, Ch. 521, L. 1975; amd. Sec. 3, Ch. 296, L. 1977; R.C.M. 1947, 16-4507(10); amd. Sec. 331, Ch. 571, L. 1979.

7-13-2245. Repealed. Sec. 25, Ch. 591, L. 1991.

History: En. Sec. 7, Ch. 242, L. 1957; amd. Sec. 6, Ch. 167, L. 1965; amd. Sec. 1, Ch. 263, L. 1967; amd. Sec. 3, Ch. 257, L. 1974; amd. Sec. 2, Ch. 310, L. 1975; amd. Sec. 2, Ch. 521, L. 1975; amd. Sec. 3, Ch. 296, L. 1977; R.C.M. 1947, 16-4507(8); amd. Sec. 389, Ch. 571, L. 1979.

7-13-2246. Withdrawal of candidacy. (1) Any individual who has been nominated as a candidate may, not later than 75 days before the day of election, cause his name to be withdrawn from nomination by filing with the election administrator a request therefor in writing, and no name withdrawn may be printed upon the ballot.

(2) If, upon such withdrawal, the number of candidates remaining does not exceed the number to be elected, then other nominations may be made by filing petitions therefor not later than 75 days prior to the election.

History: En. Sec. 7, Ch. 242, L. 1957; amd. Sec. 6, Ch. 167, L. 1965; amd. Sec. 1, Ch. 263, L. 1967; amd. Sec. 3, Ch. 257, L. 1974; amd. Sec. 2, Ch. 310, L. 1975; amd. Sec. 2, Ch. 521, L. 1975; amd. Sec. 3, Ch. 296, L. 1977; R.C.M. 1947, 16-4507(9); amd. Sec. 332, Ch. 571, L. 1979; amd. Sec. 44, Ch. 575, L. 1981; amd. Sec. 21, Ch. 250, L. 1985.

7-13-2247. Preservation of petitions. The county clerk shall preserve in his office for a period of 2 years all petitions of nomination filed under 7-13-2241.

History: En. Sec. 7, Ch. 242, L. 1957; amd. Sec. 6, Ch. 167, L. 1965; amd. Sec. 1, Ch. 263, L. 1967; amd. Sec. 3, Ch. 257, L. 1974; amd. Sec. 2, Ch. 310, L. 1975; amd. Sec. 2, Ch. 521, L. 1975; amd. Sec. 3, Ch. 296, L. 1977; R.C.M. 1947, 16-4507(11); amd. Sec. 5, Ch. 591, L. 1991.

7-13-2248. Repealed. Sec. 407, Ch. 571, L. 1979.

History: En. Sec. 7, Ch. 242, L. 1957; amd. Sec. 6, Ch. 167, L. 1965; amd. Sec. 1, Ch. 263, L. 1967; amd. Sec. 3, Ch. 257, L. 1974; amd. Sec. 2, Ch. 310, L. 1975; amd. Sec. 2, Ch. 521, L. 1975; amd. Sec. 3, Ch. 296, L. 1977; R.C.M. 1947, 16-4507(part).

7-13-2249. Repealed. Sec. 18, Ch. 79, L. 1983.

History: En. Sec. 7, Ch. 242, L. 1957; amd. Sec. 6, Ch. 167, L. 1965; amd. Sec. 1, Ch. 263, L. 1967; amd. Sec. 3, Ch. 257, L. 1974; amd. Sec. 2, Ch. 310, L. 1975; amd. Sec. 2, Ch. 521, L. 1975; amd. Sec. 3, Ch. 296, L. 1977; R.C.M. 1947, 16-4507(part).

7-13-2250 through 7-13-2253. Repealed. Sec. 407, Ch. 571, L. 1979.

Compiler's Comments

Histories of Repealed Sections:

7-13-2250 through 7-13-2253. En. Sec. 7, Ch. 242, L. 1957; amd. Sec. 6, Ch. 167, L. 1965; amd. Sec. 1, Ch. 263, L. 1967; amd. Sec. 3, Ch. 257, L. 1974; amd. Sec. 2, Ch. 310, L. 1975; amd. Sec. 2, Ch. 521, L. 1975; amd. Sec. 3, Ch. 296, L. 1977; R.C.M. 1947, 16-4507.

7-13-2254. Provision for vote by corporate property owner. Where a corporation owns real property within the boundaries of the district, the president, vice-president, or secretary of such corporation shall be entitled to cast a vote on behalf of the corporation.

History: En. Sec. 8, Ch. 242, L. 1957; amd. Sec. 1, Ch. 258, L. 1959; amd. Sec. 7, Ch. 167, L. 1965; amd. Sec. 1, Ch. 263, L. 1967; amd. Sec. 4, Ch. 257, L. 1974; amd. Sec. 3, Ch. 521, L. 1975; R.C.M. 1947, 16-4508(part).

7-13-2255. Provision for vote by nonresident property owner. An elector owning real property within the district need not reside within the district in order to vote.

History: En. Sec. 8, Ch. 242, L. 1957; amd. Sec. 1, Ch. 258, L. 1959; amd. Sec. 7, Ch. 167, L. 1965; amd. Sec. 1, Ch. 263, L. 1967; amd. Sec. 4, Ch. 257, L. 1974; amd. Sec. 3, Ch. 521, L. 1975; R.C.M. 1947, 16-4508(part).

7-13-2256. Canvass of vote. (1) The board of county commissioners shall canvass the returns of the first election, and thereafter, except as provided in this part and part 23, the board of directors shall meet as a canvassing board and duly canvass the returns within 4 days after any district election, including any district bond election.

(2) If the district lies in more than one county, the board of county commissioners whose county contains the largest percentage of the territory of said district shall canvass the returns of the first election.

History: **En. Sec. 8, Ch. 242, L. 1957; amd. Sec. 1, Ch. 258, L. 1959; amd. Sec. 7, Ch. 167, L. 1965; amd. Sec. 1, Ch. 263, L. 1967; amd. Sec. 4, Ch. 257, L. 1974; amd. Sec. 3, Ch. 521, L. 1975; R.C.M. 1947, 16-4508(part).**

7-13-2257. Repealed. Sec. 407, Ch. 571, L. 1979.

History: **En. Sec. 7, Ch. 242, L. 1957; amd. Sec. 6, Ch. 167, L. 1965; amd. Sec. 1, Ch. 263, L. 1967; amd. Sec. 3, Ch. 257, L. 1974; amd. Sec. 2, Ch. 310, L. 1975; amd. Sec. 2, Ch. 521, L. 1975; amd. Sec. 3, Ch. 296, L. 1977; R.C.M. 1947, 16-4507(19).**

7-13-2258. Effect of failure to qualify for office. If a person elected fails to qualify, the office shall be filled as if there were a vacancy in such office as provided in 7-13-2262.

History: **En. Sec. 7, Ch. 242, L. 1957; amd. Sec. 6, Ch. 167, L. 1965; amd. Sec. 1, Ch. 263, L. 1967; amd. Sec. 3, Ch. 257, L. 1974; amd. Sec. 2, Ch. 310, L. 1975; amd. Sec. 2, Ch. 521, L. 1975; amd. Sec. 3, Ch. 296, L. 1977; R.C.M. 1947, 16-4507(20).**

7-13-2259. Manner of making appointments. The mode of appointment of director or directors by a mayor or by a board of county commissioners shall be by certificate of appointment signed by said mayor or issued by said board of county commissioners and transmitted to the board of directors of said district.

History: **En. Sec. 7, Ch. 242, L. 1957; amd. Sec. 6, Ch. 167, L. 1965; amd. Sec. 1, Ch. 263, L. 1967; amd. Sec. 3, Ch. 257, L. 1974; amd. Sec. 2, Ch. 310, L. 1975; amd. Sec. 2, Ch. 521, L. 1975; amd. Sec. 3, Ch. 296, L. 1977; R.C.M. 1947, 16-4507(21).**

7-13-2260. Provision for municipalities not having mayor. In municipalities in which there is no mayor, the duty imposed upon said officer by the provisions of this part and part 23 shall be performed by the president of the board of trustees or other chief executive of the municipality.

History: **En. Sec. 32, Ch. 242, L. 1957; amd. Sec. 11, Ch. 167, L. 1965; amd. Sec. 1, Ch. 263, L. 1967; R.C.M. 1947, 16-4532(part).**

7-13-2261. Recall of officers. Every incumbent of an elective office, whether elected by popular vote for a full term, elected by the board of directors to fill a vacancy, or appointed by a mayor or the board of commissioners for a full term, is subject to recall by the electors of any district organized under the provisions of this part and part 23 in accordance with Title 2, chapter 16, part 6.

History: **En. Sec. 9, Ch. 242, L. 1957; amd. Sec. 1, Ch. 263, L. 1967; R.C.M. 1947, 16-4509; amd. Sec. 24, Ch. 251, L. 1979; amd. Sec. 333, Ch. 571, L. 1979.**

7-13-2262. Vacancies on board of directors. Any vacancy in the board of directors, whether the vacant office is elective or appointive, shall be filled by the remaining directors.

History: **En. Sec. 11, Ch. 242, L. 1957; amd. Sec. 1, Ch. 263, L. 1967; R.C.M. 1947, 16-4511(part).**

7-13-2263 through 7-13-2270 reserved.

7-13-2271. Organization of board of directors. (1) The board of directors shall hold its first meeting on the sixth Monday after the first general election for the election of directors as herein provided. It shall choose one of its members president and shall thereupon provide for the time and place of holding its meetings and the manner in which its special meetings may be called.

(2) The board shall establish rules for its proceedings.

History: **En. Sec. 10, Ch. 242, L. 1957; amd. Sec. 1, Ch. 263, L. 1967; R.C.M. 1947, 16-4510(part).**

7-13-2272. Duties of board president. The president shall sign all contracts on behalf of the district and perform such other duties as may be imposed by the board of directors.

History: **En. Sec. 16, Ch. 242, L. 1957; amd. Sec. 1, Ch. 263, L. 1967; R.C.M. 1947, 16-4516(part).**

7-13-2273. Compensation of members of board. Each of the members of the board of directors shall receive a monthly salary that may not exceed the following amounts:

(1) $60 in districts with a population of no more than 500 persons;

(2) $80 in districts with a population that exceeds 500 but is no more than 5,000 persons; and

(3) $100 in districts with a population of more than 5,000 persons.

History: **En. Sec. 11, Ch. 242, L. 1957; amd. Sec. 1, Ch. 263, L. 1967; R.C.M. 1947, 16-4511(part); amd. Sec. 1, Ch. 46, L. 1981.**

7-13-2274. Conduct of business. (1) All legislative sessions of the board of directors, whether regular or special, must be open to the public. Notice of the sessions must be given and the sessions must be held in compliance with the requirements of Title 2, chapter 3, parts 1 and 2.

(2) A majority of the board constitutes a quorum for the transaction of business.

(3) The board may act only by ordinance or resolution.

History: **En. Secs. 10, 11, Ch. 242, L. 1957; amd. Sec. 1, Ch. 263, L. 1967; R.C.M. 1947, 16-4510(part), 16-4511(part); amd. Sec. 2, Ch. 518, L. 1995.**

Compiler's Comments

1995 Amendment: Chapter 518 in (1) inserted second sentence providing that notice of the sessions be given and that they be held in compliance with Title 2, chapter 3, parts 1 and 2; in (3) substituted "may" for "shall"; and made minor changes in style. Amendment effective April 25, 1995.

7-13-2275. Procedure relating to ordinances and resolutions — rates, fees, and charges established. (1) The ayes and noes must be taken upon the passage of all ordinances or resolutions and entered upon the journal of the proceedings of the board of directors. An ordinance or resolution may not be passed or become effective without the affirmative votes of at least a majority of the total members of the board.

(2) The enacting clause of all ordinances passed by the board must be in these words: "Be it ordained by the board of directors of.... district as follows:"

(3) All resolutions and ordinances must be signed by the president of the board and attested by the secretary.

(4) Prior to the passage or enactment of an ordinance or resolution imposing, establishing, changing, or increasing rates, fees, or charges for services or facilities, the board shall order a public hearing.

(a) Notice of the public hearing must be published as provided in 7-1-2121. The published notice must contain:

(i) the date, time, and place of the hearing;

(ii) a brief statement of the proposed action; and

(iii) the address and telephone number of a person who may be contacted for further information regarding the hearing.

(b) The notice must also be mailed to all persons who own property in the district and to all customers of the district at least 7 days and not more than 30 days prior to the public hearing. The mailed notice must contain an estimate of the amount that the property owner or customer will be charged under the proposed ordinance or resolution.

(c) Any interested person, corporation, or company may be present, represented by counsel, and testify at the hearing.

(d) The hearing may be continued by the board as necessary. After the public hearing, the board may, by resolution, impose, establish, change, or increase rates, fees, or charges.

History: En. Sec. 11, Ch. 242, L. 1957; amd. Sec. 1, Ch. 263, L. 1967; R.C.M. 1947, 16-4511(part); amd. Sec. 3, Ch. 518, L. 1995.

Compiler's Comments

1995 Amendment: Chapter 518 inserted (4) requiring a public hearing before enactment of fees or changes in fees, stating what the hearing notice must contain and how it must be mailed, allowing persons to appear and be heard, and allowing the hearing to be continued as necessary; and made minor changes in style. Amendment effective April 25, 1995.

7-13-2276. Right of initiative and referendum. (1) Ordinances may be passed by the electors of any district organized under the provisions of this part and part 23 in accordance with the methods provided by the general laws of the state for direct legislation applicable to cities and towns.

(2) Ordinances may be disapproved and thereby vetoed by the electors of any such district by proceeding in accordance with the methods provided by the general laws of the state for protesting against legislation by cities and towns.

History: En. Secs. 29, 30, Ch. 242, L. 1957; amd. Sec. 1, Ch. 263, L. 1967; R.C.M. 1947, 16-4529, 16-4530.

Cross-References

Initiative and referendum, Art. XI, sec. 8, Mont. Const.

Local government initiative and referendum, Title 7, ch. 5, part 1.

7-13-2277. Appointment of administrative personnel. (1) The board of directors shall, at its first meeting or as soon thereafter as practicable, appoint by a majority vote a general manager, a secretary, and an auditor. No director shall be eligible to the office of general manager, secretary, or auditor.

(2) The general manager, secretary, and auditor shall receive such compensation as the board shall determine, and each shall serve at the pleasure of the board.

History: En. Sec. 12, Ch. 242, L. 1957; R.C.M. 1947, 16-4512.

7-13-2278. Duties of administrative personnel. (1) The general manager shall have full charge and control of the maintenance, operation, and construction of all works and systems of the district, with full power and authority to employ and discharge all employees and assistants at pleasure and prescribe their duties, and shall, subject to the approval of the board of directors, fix their compensation. The general manager shall perform such other duties as may be imposed upon him by the board. The general manager shall report to the board in accordance with such rules as it may adopt.

(2) The secretary shall countersign all contracts on behalf of the district and perform such other duties as may be imposed by the board.

(3) The auditor shall be charged with the duty of installing and maintaining a system of auditing and accounting that shall completely and at all times show the financial condition of the district. He shall draw warrants to pay demands made against the district when such demands have been first approved by at least three members of the board and by the general manager.

History: En. Sec. 16, Ch. 242, L. 1957; amd. Sec. 1, Ch. 263, L. 1967; R.C.M. 1947, 16-4516(part).

7-13-2279. Performance bonds for administrative personnel. The general manager, secretary, and auditor and all other employees or assistants of said district who may be required to do so by the board of directors shall give bonds to the district, conditioned for the faithful performance of their duties, as the board from time to time may provide.

History: En. Sec. 16, Ch. 242, L. 1957; amd. Sec. 1, Ch. 263, L. 1967; R.C.M. 1947, 16-4516(part).

Cross-References

General provisions relating to official bonds, Title 2, ch. 9, part 5.

Part 23

County Water and/or Sewer Districts Continued

7-13-2301. Establishment of charges for services — payment of charges. (1) The board of directors shall fix all water and sewer rates and shall, through the general manager, collect the sewer charges and the charges for the sale and distribution of water to all users.

(2) The board, in furnishing water, sewer service, other services, and facilities, shall review, at least once every 2 years, and from time to time fix the rate, fee, toll, rent, or other charge for the services, facilities, and benefits directly afforded by the facilities, taking into account services provided and direct benefits received, that will be sufficient in each year to provide income and revenue adequate for:

(a) the payment of the reasonable expense of operation and maintenance of the facilities;

(b) administration of the district;

(c) the payment of principal and interest on any bonded or other indebtedness of the district; and

(d) the establishment or maintenance of any required reserves, including reserves needed for expenditures for depreciation and replacement of facilities, as may be determined necessary from time to time by the board or as covenanted in the ordinance or resolution authorizing the outstanding bonds of the district.

(3) A person or entity may not use any facility without paying the rate established for the facility. In the event of nonpayment, the board may order the discontinuance of water or sewer service or both to the property and may require that all delinquent charges, interest, penalties, and deposits be paid before restoration of the service.

(4) (a) If the board has ordered discontinuance of service as provided in subsection (3) and the person or entity who received the service has not made

full payment of all delinquent charges, interest, penalties, and deposits, then a district may elect to have its delinquent charges for water or sewer services collected as a tax against the property by following the procedures of this subsection (4). If a charge for services is due and payable in a fiscal year and is not paid by the end of the fiscal year, the general manager shall, by July 15 of the succeeding fiscal year, give notice to the owners of the property to which the service was provided. The notice must be in writing and:

(i) must specify the charges owed, including any interest and penalty;

(ii) must specify that the amount due must be paid by August 15 or it will be levied as a tax against the property;

(iii) must state that the district may institute suit in any court of competent jurisdiction to recover the amount due; and

(iv) may be served on the owner personally or by letter addressed to the post-office address of the owner as recorded in the county assessor's office.

(b) On September 1 of each year, the general manager shall certify and file with the county assessor a list of all property, including legal descriptions, on which arrearages remain unpaid. The list must include the amount of each arrearage, including interest and penalty. The county assessor shall assess the amount owed as a tax against each lot or parcel with an arrearage. If the property on which arrearages remain unpaid contains a mobile home, the amount owed must be assessed as a tax against the owner of the mobile home. If the mobile home for which arrearages remain unpaid is no longer on the property, the amount owed must be assessed as a tax against the property.

(5) In addition to collecting delinquent charges in the same manner as a tax, a district may bring suit in any court of competent jurisdiction to collect amounts due as a debt owed to the district.

(6) Notwithstanding any other section of part 22 or this part or any limitation imposed in part 22 or this part, when the board has applied for and received from the federal government any money for the construction, operation, and maintenance of facilities, the board may adopt a system of charges and rates to require that each recipient of facility services pays its proportionate share of the costs of operation, maintenance, and replacement and may require industrial users of facilities to pay the portion of the cost of construction of the facilities that is allocable to the treatment of that industrial user's wastes.

History: (1)En. Sec. 25, Ch. 242, L. 1957; amd. Sec. 1, Ch. 263, L. 1967; Sec. 16-4525, R.C.M. 1947; (2), (3)En. Sec. 26, Ch. 242, L. 1957; amd. Sec. 1, Ch. 263, L. 1967; amd. Sec. 17, Ch. 455, L. 1975; Sec. 16-4526, R.C.M. 1947; R.C.M. 1947, 16-4525, 16-4526; amd. Sec. 4, Ch. 518, L. 1995.

Compiler's Comments

1995 Amendment: Chapter 518 in (2), in introductory clause, inserted review requirement and substituted "for the services, facilities, and benefits directly afforded by the facilities, taking into account services provided and direct benefits received that will be sufficient in each year to provide income and revenue adequate for" for "pay the operating expenses of the district, provide for repairs and depreciation of works owned or operated by it, pay the interest on any bonded debt, and so far as possible, provide a sinking or other fund for the payment of the principal of such debt as it may become due"; inserted (2)(a) through (2)(d) stating what the charges must be adequate to pay for; inserted (3) providing that a facility may not be used without paying the established rate and providing sanctions for nonpayment; inserted (4) providing for collection of delinquent charges, notice to the delinquent persons, content of the notice, a list of properties with unpaid charges, and assessment of the charges as a tax against the properties; inserted (5) allowing suit to collect unpaid charges; in (6) substituted references to facilities for references to treatment works; and made minor changes in style. Amendment effective April 25, 1995.

Cross-References

Public Service Commission's ratemaking procedures, Title 69, ch. 3, part 3.

7-13-2302. Levy of taxes to meet bond obligations and other expenses. (1) If from any cause the revenues of the district shall be inadequate to pay the interest or principal of any bonded debt as it becomes due or any other expenses or claims against the district, then the board of directors must (at least 15 days before the first day of the month in which the board of county commissioners of the county, city and county, or counties in which such district is located are required by law to levy the amount of taxes required for county or city and county purposes) furnish to the board or boards of county commissioners and to the auditor or auditors, respectively, an estimate in writing:

(a) of the amount of money required by the district for the payment of the principal of or interest on any bonded debt as it becomes due;

(b) of the amount of money required to establish reasonable reserve funds for either of said purposes, together with a description of the lands benefited thereby, as stated by the board of directors in the resolution declaring the necessity to incur such bonded indebtedness; and

(c) of the amount of money required by the district for any other purpose set forth in this section.

(2) The board of county commissioners of such county or city and county, annually, at the time and in the manner of levying other county or city and county taxes, must:

(a) until any such bonded debt is fully paid, levy upon the lands so benefited and cause to be collected the proportionate share to be borne by the land located in their county of a tax sufficient for the payment thereof, to be known as the ...... district bond tax; and

(b) until all other expenses or claims are fully paid, levy upon all of the lands of the district and cause to be collected the proportionate share to be borne by the land located in their county of a tax sufficient for the payment thereof, to be known as the .... district water and/or sewer tax.

(3) Such taxes for the payment of any such bonded debt shall be levied on the property benefited thereby, as stated by the board of directors in the resolution declaring the necessity therefor, and all taxes for other purposes shall be levied on all property in the territory comprising the district.

History: (1), (2)En. Sec. 27, Ch. 242, L. 1957; amd. Sec. 3, Ch. 258, L. 1959; amd. Sec. 1, Ch. 46, L. 1961; amd. Sec. 1, Ch. 68, L. 1963; amd. Sec. 9, Ch. 167, L. 1965; amd. Sec. 1, Ch. 263, L. 1967; amd. Sec. 5, Ch. 296, L. 1977; Sec. 16-4527, R.C.M. 1947; (3)En. Sec. 28, Ch. 242, L. 1957; amd. Sec. 1, Ch. 45, L. 1959; Sec. 16-4528, R.C.M. 1947; R.C.M. 1947, 16-4527(part), 16-4528(part).

Cross-References

Collection of taxes, 7-13-2309.

7-13-2303. Method of assessment. (1) When the amount of money required for any purpose enumerated in 7-13-2302 has been determined:

(a) each lot or parcel of land to be assessed shall be assessed with that part of the amount of money required which its area bears to the total area of all of the lands to be assessed; or

(b) said assessment may, at the option of the board or boards of county commissioners, be based upon the taxable valuation as stated in the last completed county assessment roll of the lots or parcels of land, exclusive of improvements thereon, within said district; and in which case, each lot or parcel of land to be assessed shall be assessed with that part of the amount of money required which its taxable valuation bears to the total taxable valuation of all of the lands to be assessed.

(2) However, where the district lies in more than one county, the same method of assessment shall be used by each board of county commissioners.

History: En. Sec. 27, Ch. 242, L. 1957; amd. Sec. 3, Ch. 258, L. 1959; amd. Sec. 1, Ch. 46, L. 1961; amd. Sec. 1, Ch. 68, L. 1963; amd. Sec. 9, Ch. 167, L. 1965; amd. Sec. 1, Ch. 263, L. 1967; amd. Sec. 5, Ch. 296, L. 1977; R.C.M. 1947, 16-4527(part).

7-13-2304. Notice of intention to levy tax. (1) When the written estimate of the amount of money required has been delivered to the board of county commissioners, the board shall give notice of its intention to levy and collect a tax sufficient for the payment of bond obligations and other expenses.

(2) The notice must be given:

(a) by posting in five public places within the county and within the boundaries of the lands upon which the tax is to be levied;

(b) by publishing a copy of the notice as provided in 7-1-2121; and

(c) by forwarding, by mail as provided in 7-1-2122 at least 10 days prior to the hearing provided for in 7-13-2306(4), a copy of the notice addressed to the owners and the purchasers under contracts for deed of taxable real property within the district as shown by the current property tax record maintained by the department of revenue for the county or counties the boundaries of which include taxable real property of the district.

History: En. Sec. 27, Ch. 242, L. 1957; amd. Sec. 3, Ch. 258, L. 1959; amd. Sec. 1, Ch. 46, L. 1961; amd. Sec. 1, Ch. 68, L. 1963; amd. Sec. 9, Ch. 167, L. 1965; amd. Sec. 1, Ch. 263, L. 1967; amd. Sec. 5, Ch. 296, L. 1977; R.C.M. 1947, 16-4527(part); amd. Sec. 6, Ch. 526, L. 1983; amd. Sec. 21, Ch. 349, L. 1985; amd. Sec. 17, Ch. 27, Sp. L. November 1993.

7-13-2305. Legal sufficiency of notice. The legislature hereby finds, determines, and declares that the giving of notice in accordance with 7-13-2304(2) is reasonably calculated to inform the owners of taxable real property located within the boundaries of the district of the hearing provided for in 7-13-2306(4) and that the giving of any further notice is impracticable and is unnecessary to the assurance of due process of law to such property owners.

History: En. Sec. 27, Ch. 242, L. 1957; amd. Sec. 3, Ch. 258, L. 1959; amd. Sec. 1, Ch. 46, L. 1961; amd. Sec. 1, Ch. 68, L. 1963; amd. Sec. 9, Ch. 167, L. 1965; amd. Sec. 1, Ch. 263, L. 1967; amd. Sec. 5, Ch. 296, L. 1977; R.C.M. 1947, 16-4527(part).

7-13-2306. Contents of notice — hearing and protest. The notice required by 7-13-2304 must state:

(1) the amount of money required;

(2) the method of assessment that the board or boards of county commissioners intend to employ;

(3) the boundaries or description of the lands to be assessed, which may be recited in full or may be given by reference to any instrument on file or of record in the office of the clerk and recorder or treasurer of the county or counties in which the district or part of the district is situated or with the department of revenue; and

(4) the time when and the place where the board or boards of county commissioners will hear and pass upon all protests that may be made against the levy of the tax or any matter pertaining to the tax.

History: En. Sec. 27, Ch. 242, L. 1957; amd. Sec. 3, Ch. 258, L. 1959; amd. Sec. 1, Ch. 46, L. 1961; amd. Sec. 1, Ch. 68, L. 1963; amd. Sec. 9, Ch. 167, L. 1965; amd. Sec. 1, Ch. 263, L. 1967; amd. Sec. 5, Ch. 296, L. 1977; R.C.M. 1947, 16-4527(part); amd. Sec. 18, Ch. 27, Sp. L. November 1993.

7-13-2307. Hearing on protest to levy of tax. (1) The hearing provided for in 7-13-2306(4) shall be had no less than 15 days after the last publication of the notice.

(2) At the time and place designated for said hearing, any owner of property situated within the area to be assessed may appear and protest the levy of the tax or any matter pertaining thereto. All protests must be heard, considered, and ruled upon by the board of county commissioners.

(3) The board of county commissioners may adjourn said hearing from time to time.

History: En. Sec. 27, Ch. 242, L. 1957; amd. Sec. 3, Ch. 258, L. 1959; amd. Sec. 1, Ch. 46, L. 1961; amd. Sec. 1, Ch. 68, L. 1963; amd. Sec. 9, Ch. 167, L. 1965; amd. Sec. 1, Ch. 263, L. 1967; amd. Sec. 5, Ch. 296, L. 1977; R.C.M. 1947, 16-4527(part).

7-13-2308. Payment of tax under protest — action to recover. (1) Where such tax is deemed unlawful for any reason by the person whose property is taxed, whether or not he has protested the same at the hearing provided for in 7-13-2306(4), he may pay the tax or the installments thereof under protest in the manner provided by 15-1-402 and, thereupon and within the time prescribed and in the manner provided by 15-1-402, may commence an action to recover such tax or installments and in such action contest and litigate the payment of such tax on the same grounds and for the same reasons that he has stated in his written protest and for no other reasons and on no other grounds.

(2) All of the provisions of 15-1-402 for the retention or refunding of taxes paid under protest shall apply to taxes paid under protest under this section.

History: En. Sec. 27, Ch. 242, L. 1957; amd. Sec. 3, Ch. 258, L. 1959; amd. Sec. 1, Ch. 46, L. 1961; amd. Sec. 1, Ch. 68, L. 1963; amd. Sec. 9, Ch. 167, L. 1965; amd. Sec. 1, Ch. 263, L. 1967; amd. Sec. 5, Ch. 296, L. 1977; R.C.M. 1947, 16-4527(part).

7-13-2309. Collection of taxes. (1) All taxes referred to in 7-13-2302(3) shall be collected at the same time and in the same manner and form as county taxes are collected and when collected shall be paid to the district for which such taxes were levied and collected.

(2) Such taxes, if not paid, shall become delinquent at the same time as do county taxes.

History: En. Sec. 28, Ch. 242, L. 1957; amd. Sec. 1, Ch. 45, L. 1959; R.C.M. 1947, 16-4528(part).

7-13-2310. Taxes to be lien. (1) If such taxes are levied for the payment of a bonded debt for the benefit of certain property within the district, as stated in the aforesaid resolution of the board of directors, such taxes shall be a lien upon each lot or parcel of said property to the extent of the levy of said taxes upon said lot or parcel. All taxes for other purposes shall be a lien upon each lot or parcel of land within the entire area comprising the district, to the extent of the levy of said taxes upon said lot or parcel.

(2) Said taxes, whether for the payment of a bonded indebtedness or for other purposes, shall be of the same force and effect as other liens for taxes, and their collection shall be enforced by the same means as provided for in the enforcement of liens for state and county taxes.

History: En. Sec. 28, Ch. 242, L. 1957; amd. Sec. 1, Ch. 45, L. 1959; R.C.M. 1947, 16-4528(part).

7-13-2311. Designation of fund depositary. The board of directors shall designate a depositary or depositaries to have the custody of the funds of the district, all of which depositaries shall give security sufficient to secure the district against possible loss and shall pay the warrants drawn by the auditor for demands against the district under such rules as the directors may prescribe.

History: En. Sec. 16, Ch. 242, L. 1957; amd. Sec. 1, Ch. 263, L. 1967; R.C.M. 1947, 16-4516(part).

7-13-2312 through 7-13-2320 reserved.

7-13-2321. Procedure to incur bonded indebtedness. Whenever the board of directors considers it necessary for the district to incur a bonded indebtedness, other than for indebtedness to refund bonded indebtedness as provided for in 7-13-2331, it shall by resolution state the purpose for the proposed debt, the land within the district to be benefited, the amount of debt to be incurred, the maximum term for the proposed bonds before maturity, and the proposition to be submitted to the electors.

History: En. Sec. 17, Ch. 242, L. 1957; amd. Sec. 26, Ch. 234, L. 1971; R.C.M. 1947, 16-4517(part); amd. Sec. 5, Ch. 518, L. 1995.

Compiler's Comments

1995 Amendment: Chapter 518 after "indebtedness" inserted "other than for indebtedness to refund bonded indebtedness as provided for in 7-13-2331"; and made minor changes in style. Amendment effective April 25, 1995.

7-13-2322. Term of bonds. The maximum term of bonds shall not exceed 40 years.

History: En. Sec. 17, Ch. 242, L. 1957; amd. Sec. 26, Ch. 234, L. 1971; R.C.M. 1947, 16-4517(part).

7-13-2323. Election on question of incurring bonded indebtedness. The board of directors shall fix a date upon which an election is held for the purpose of authorizing the bonded indebtedness to be incurred. The election must be held in conjunction with a regular or primary election.

History: En. Sec. 18, Ch. 242, L. 1957; R.C.M. 1947, 16-4518; amd. Sec. 334, Ch. 571, L. 1979; amd. Sec. 44, Ch. 387, L. 1995.

Compiler's Comments

1995 Amendment: Chapter 387 inserted second sentence that read: "The election must be held in conjunction with a regular or primary election"; and made minor changes in style.

7-13-2324. Notice of election on incurring bonded indebtedness. (1) The board of directors shall give notice of the holding of the election. The notice must:

(a) state the date of the election;

(b) state the hours the polls will be open;

(c) describe the boundaries of voting precincts, which may include only the lands to be benefited as stated in the resolution;

(d) describe the purpose of the issue, the amount of bonds proposed to be issued, and the term of years for repayment of the bonds;

(e) reference the resolution authorizing the election and state that it is available for public inspection; and

(f) state any other information that the board considers proper.

(2) The notice must be published as provided in 13-1-108.

History: **(1)En. Sec. 19, Ch. 242, L. 1957; amd. Sec. 1, Ch. 263, L. 1967; Sec. 16-4519, R.C.M. 1947; (2)En. Sec. 20, Ch. 242, L. 1957; amd. Sec. 2, Ch. 258, L. 1959; amd. Sec. 8, Ch. 167, L. 1965; amd. Sec. 1, Ch. 263, L. 1967; amd. Sec. 5, Ch. 257, L. 1974; amd. Sec. 4, Ch. 521, L. 1975; amd. Sec. 4, Ch. 296, L. 1977; Sec. 16-4520, R.C.M. 1947; R.C.M. 1947, 16-4519(part), 16-4520(part); amd. Sec. 335, Ch. 571, L. 1979; amd. Sec. 6, Ch. 518, L. 1995.**

Compiler's Comments

1995 Amendment: Chapter 518 in (1) deleted provision that the notice contain the resolution adopted by the board; inserted (1)(a), (1)(b), (1)(d), (1)(e), and (1)(f) concerning specific items that the notice must contain and relating to election and polls information, the purpose, amount, and term of the bond issue, availability of the resolution for inspection, and other information considered proper; at end of (1)(c) deleted "and the location of polling places"; and made minor changes in style. Amendment effective April 25, 1995.

7-13-2325. Qualifications to vote on question of incurring bonded indebtedness. Every registered elector owning or residing upon real property within such voting precincts, but no others, shall be entitled to vote at the election.

History: **En. Sec. 20, Ch. 242, L. 1957; amd. Sec. 2, Ch. 258, L. 1959; amd. Sec. 8, Ch. 167, L. 1965; amd. Sec. 1, Ch. 263, L. 1967; amd. Sec. 5, Ch. 257, L. 1974; amd. Sec. 4, Ch. 521, L. 1975; amd. Sec. 4, Ch. 296, L. 1977; R.C.M. 1947, 16-4520(part); amd. Sec. 336, Ch. 571, L. 1979.**

7-13-2326. Repealed. Sec. 407, Ch. 571, L. 1979.

History: **En. Sec. 21, Ch. 242, L. 1957; R.C.M. 1947, 16-4521(part).**

7-13-2327. Entry of bond election results. The secretary of the board of directors, as soon as the result is declared, shall enter in the records of such board a statement of such results.

History: **En. Sec. 21, Ch. 242, L. 1957; R.C.M. 1947, 16-4521(part).**

7-13-2328. Sufficient vote required to issue bonds. If from such returns it appears that 60% or more of the votes cast on the question at such election were in favor of and assented to the incurring of such indebtedness, then the board of directors may by resolution, at such time or times as it considers proper, provide for the form and execution of the bonds and for the issuance of any part thereof.

History: **En. Sec. 22, Ch. 242, L. 1957; amd. Sec. 1, Ch. 335, L. 1969; R.C.M. 16-4522(part); amd. Sec. 337, Ch. 571, L. 1979.**

7-13-2329. Sale of bonds. The board of directors may sell or dispose of the bonds issued pursuant to 7-13-2328 at such times or in such manner as it may deem to be to the public interest.

History: **En. Sec. 22, Ch. 242, L. 1957; amd. Sec. 1, Ch. 335, L. 1969; R.C.M. 16-4522(part).**

7-13-2330. Status of bonds — tax exemption. Any bonds issued by any district organized under the provisions of this part and part 22 are hereby given the same force, value, and use as bonds issued by any municipality and shall be exempt from all taxation within the state of Montana.

History: **En. Sec. 23, Ch. 242, L. 1957; R.C.M. 1947, 16-4523.**

7-13-2331. Issuance of general obligation bonds. (1) In addition to the powers granted to a district in this part to finance facilities and improvements, a district may issue general obligation bonds for a term of up to 40 years to:

(a) provide funds to pay part or all of the cost of acquisition, construction, or improvement of facilities; or

(b) refund any bonds issued for the acquisition, construction, or improvement of facilities.

(2) General obligation bonds issued pursuant to this section must be authorized, sold, and issued, with provisions for their payment, in the manner and subject to the conditions prescribed for bonds of school districts in Title 20, chapter 9, part 4, except to the extent that those conditions conflict with the express provisions of part 22 or this part.

(3) Nothing in this section prohibits a district from imposing rates or other charges for the use of facilities that have been financed in whole or part by general obligation bonds under this section if the revenue from the rates or charges is used to abate taxes that have been levied to pay the principal or interest on the general obligation bonds or is used to pay the principal or interest on other bonded indebtedness of the district.

History: **En. Sec. 7, Ch. 518, L. 1995.**

Compiler's Comments

Effective Date: Section 10, Ch. 518, L. 1995, provided that this section is effective April 25, 1995.

7-13-2332. Issuance of refunding bonds without election. (1) (a) District refunding bonds, issued to provide money to refund outstanding bonded indebtedness, may be issued without a vote of the electorate. In order to issue refunding bonds, the board of directors shall adopt a resolution setting forth the facts regarding the outstanding bonds that are to be redeemed, the reasons for issuing the refunding bonds, and the terms and details of the refunding bond issue.

(b) After adopting a resolution, the board of directors may sell the bonds at times and in a manner considered to be in the public interest.

(2) (a) Refunding bonds may be issued prior to the maturity or redemption date of the outstanding bonds they are to refund. The proceeds of the refunding bonds, less any accrued interest or premium received upon the sale of the refunding bonds or amounts to be used for the cost of issuance or establishing reserves for the refunding bonds, must be deposited with other funds appropriated for payment of the outstanding bonds in escrow with a suitable banking institution in or out of the state.

(b) Deposited funds must be invested in securities that are general obligations of the United States or in securities for which the principal and interest are guaranteed by the United States. The securities must be payable on the dates required and bear interest at a rate sufficient, with any cash retained in the escrow account, to pay, when due, accrued interest on each refunded bond until its maturity or redemption date if called for redemption. The securities must also be sufficient to pay the principal of the bond at maturity or upon the redemption date and to pay any redemption premium.

(c) The escrow account must be irrevocably appropriated to the payment of principal, interest, and redemption premium, if any, of the refunded bonds.

(d) A district may pay for reasonable costs of issuing the refunding bonds and maintaining the escrow account. Alternatively, a district may issue cross-over refunding bonds as provided in Title 17, chapter 5, part 21.

History: En. Sec. 8, Ch. 518, L. 1995.

Compiler's Comments

Effective Date: Section 10, Ch. 518, L. 1995, provided that this section is effective April 25, 1995.

7-13-2333 through 7-13-2339 reserved.

7-13-2340. Correction of erroneous property description. (1) As provided in this section, the board of directors of any district may correct an erroneous property description of land within the district.

(2) The board of directors shall by resolution:

(a) set forth the current property description and the proposed property description;

(b) set a date for a public hearing to be held on the proposed property description; and

(c) provide that the property description change is intended only for the purpose of correcting an erroneous land description.

(3) A copy of the resolution adopted pursuant to subsection (2) must be posted in three public places in the district and mailed to the owner or owners of record of the property described in subsection (2)(a).

(4) After hearing comments and receiving written consent by the owner or owners of the property described in subsection (2)(a) at the public hearing, the board of directors may by resolution adopt the proposed property description as the correct property description. The correct property description is effective upon filing a copy of the resolution with the county clerk and recorder of the county or counties in which the district is located.

History: En. Sec. 1, Ch. 259, L. 1985.

7-13-2341. Addition of land to district. (1) Except as provided in subsection (5), any portion of any county, any municipality, or both, may be added to any district organized under the provisions of this part and part 22 at any time upon petition presented in the manner provided in this part and part 22 for the organization of the district.

(2) The petition may be granted by ordinance of the board of directors of the district. The ordinance must be submitted for adoption or rejection to the vote of the electors in the district and in the proposed addition at a general election or a special election held in conjunction with a regular or primary election.

(3) If the ordinance is approved, the president and secretary of the board of directors shall certify that fact to the secretary of state and to the county clerk and recorder of the county in which the district is located. Upon the receipt of the certification, the secretary of state shall within 10 days issue a certificate that states the passage of the ordinance and the addition of the territory to the district. A copy of the certificate must be transmitted to and filed with the county clerk and recorder of the county in which the district is situated.

(4) After the filing of the certificate, the territory is added to and is a part of the district with all the rights, privileges, and powers set forth in this part and necessarily incident to this part.

(5) If the board of directors determines that a district has a water facility or a sewer facility with a capacity greater than required to meet the needs of the current district, it may by ordinance, upon petition of contiguous property owners and with the written consent of all property owners to whom the service is to be extended, expand the district to include land, to the extent of excess capacity, without complying with subsections (1) and (2). However, if the board determines that an election should be held or if 40% or more of the members of the district petition for an election, compliance with subsections (1) and (2) is required.

History: En. Sec. 31, Ch. 242, L. 1957; amd. Sec. 1, Ch. 263, L. 1967; R.C.M. 1947, 16-4531(part); amd. Sec. 1, Ch. 411, L. 1981; amd. Sec. 22, Ch. 250, L. 1985; amd. Sec. 1, Ch. 597, L. 1985; amd. Sec. 45, Ch. 387, L. 1995.

Compiler's Comments

1995 Amendment: Chapter 387 in (2), at end, substituted "held in conjunction with a regular or primary election" for "held, as provided in this part and part 22, no less than 75 or more than 90 days after the adoption of such ordinance"; in (4), at beginning, substituted "After the filing" for "From and after the date"; and made minor changes in style.

7-13-2342. Consolidation of county water and/or sewer districts. (1) Two or more districts organized under the provisions of this part and part 22 may consolidate at any time, upon petitions submitted to the board of directors of each such district. Such petitions shall be in the form required for petitions for the organization of districts. Each such petition shall be signed by not less than 10% of the registered voters of the territory included within said district.

(2) Said petitions may be granted by ordinance of the board of directors of each of said districts. Such ordinances shall be submitted for adoption or rejection to the vote of the electors in such districts at general or special elections held, as provided in this part and part 22, within 70 days after the adoption of such ordinances.

(3) If such ordinances are approved, the president and secretary of the boards of directors of each of said districts shall certify that fact to the secretary of state and to the county clerk of the county or counties in which such districts are located. Upon the receipt of said certificate, the secretary of state shall within 10 days issue his certificate, reciting the passage of said ordinances and the consolidation of said districts. A copy of such certificate shall be transmitted to and filed with the county clerk of each county in which such consolidated district is situated.

(4) From and after the date of such certificate, the districts shall be deemed to be consolidated and shall consist of one district with all the rights, privileges, and powers set forth in this part and part 22 and necessarily incident thereto.

(5) The number and manner of selection and election of directors of the consolidated district shall be the same as the number and manner of selection and election of directors of newly organized districts.

History: En. Sec. 31, Ch. 242, L. 1957; amd. Sec. 1, Ch. 263, L. 1967; R.C.M. 1947, 16-4531(part).

7-13-2343. Exclusion of land from district — initiated by petition. Any territory included within any district formed under the provisions of this part and part 22 and not benefited in any manner by such district or its continued inclusion therein may be excluded therefrom by order of the board of directors of such district upon the verified petition of the owner or owners in fee of lands whose assessed value, with improvements, is in excess of one-half of the assessed value of all the lands, with improvements, held in private ownership in such territory.

History: En. Sec. 33, Ch. 242, L. 1957; amd. Sec. 12, Ch. 167, L. 1965; amd. Sec. 1, Ch. 263, L. 1967; amd. Sec. 6, Ch. 296, L. 1977; R.C.M. 1947, 16-4533(part).

7-13-2344. Details relating to petition to exclude land from district. (1) The petition referred to in 7-13-2343 shall describe the territory sought to be excluded, shall set forth that such territory is not benefited in any manner by said district or its continued inclusion therein, and shall pray that such territory may be excluded and taken from said district.

(2) Such petition shall be filed with the secretary of the district and shall be accompanied by a deposit with such secretary of the sum of $100 to meet the expenses of advertising and other costs incident to the proceedings for the exclusion of such territory, including the cost of recording a certified copy of the order provided for in 7-13-2346. Any unconsumed balance shall be returned to the petitioner.

History: En. Sec. 33, Ch. 242, L. 1957; amd. Sec. 12, Ch. 167, L. 1965; amd. Sec. 1, Ch. 263, L. 1967; amd. Sec. 6, Ch. 296, L. 1977; R.C.M. 1947, 16-4533(part).

7-13-2345. Hearing and notice on petition to exclude land. (1) Upon the filing of such petition with the secretary of the district, he shall call a meeting of the board of directors of the district at a time not less than 25 days or more than 50 days after the filing of the petition and cause a notice of the filing of such petition to be published as provided in 7-1-2121. Such notice shall also state the date of the filing of such petition and that the same will come on for hearing before the board of directors of the district.

(2) Any landowner or taxpayer within the district shall have the right to appear at said hearing, either in behalf of or in opposition to the granting of said petition. Said petition shall come on for hearing before the board of directors of the district at the time and place specified in the notice of hearing.

(3) (a) Except as provided in subsection (3)(b), the place of the hearing shall be the regular meeting place of the board of directors of the district.

(b) The board may adjourn the hearing to a more convenient meeting place within the district.

History: En. Sec. 33, Ch. 242, L. 1957; amd. Sec. 12, Ch. 167, L. 1965; amd. Sec. 1, Ch. 263, L. 1967; amd. Sec. 6, Ch. 296, L. 1977; R.C.M. 1947, 16-4533(part); amd. Sec. 22, Ch. 349, L. 1985.

7-13-2346. Decision on petition to exclude land. (1) If upon such hearing the board of directors determines that it is for the best interests of the district that the lands mentioned in the petition or some portion thereof be excluded from the district or if it appears that such lands or some portion thereof will not be benefited by their continued inclusion in the district, then the board shall make an order that such lands or such portion thereof be excluded from the district, such order to describe specifically the lands so excluded.

(2) A copy of such order of exclusion, certified to by the secretary of the district, shall be recorded in the office of the county recorder of the county or

counties in which the district is situated, and the record of such certified copy shall be deemed prima facie evidence of the exclusion from the district of the lands purporting to be excluded thereby.

History: En. Sec. 33, Ch. 242, L. 1957; amd. Sec. 12, Ch. 167, L. 1965; amd. Sec. 1, Ch. 263, L. 1967; amd. Sec. 6, Ch. 296, L. 1977; R.C.M. 1947, 16-4533(part).

7-13-2347. Effect of order excluding land. From the time of the making of the order of exclusion, the lands so excluded shall be deemed to be no longer included in the district, but such order of exclusion shall not be taken to invalidate in any manner any taxes or assessments theretofore levied or assessed against the lands so excluded.

History: En. Sec. 33, Ch. 242, L. 1957; amd. Sec. 12, Ch. 167, L. 1965; amd. Sec. 1, Ch. 263, L. 1967; amd. Sec. 6, Ch. 296, L. 1977; R.C.M. 1947, 16-4533(part).

7-13-2348. Exclusion of land from district — initiated by board of directors. (1) The board of directors of any district formed under the provisions of this part and part 22 may itself initiate the proceedings for the exclusion from the district of any land or lands which it may not be for the best interests of the district to be included or which may not be benefited in any manner by their continued inclusion therein.

(2) Such proceedings shall be initiated by the board by the passage of a resolution:

(a) requiring all persons interested to appear and show cause before the board, at a time and place specified, why such lands (describing them) should not be excluded from the district; and

(b) fixing a time and place for such hearing and directing the secretary of the district to give notice of the passage of such resolution and of such hearing.

(3) Upon the passage of such resolution, the secretary of the district shall give notice thereof and of the time and place of such hearing in the manner hereinbefore prescribed for notice of hearing upon petition by a landowner or landowners, and thereafter all proceedings shall be had in the manner and with the effect herein provided for proceedings upon a petition by a landowner or landowners. The time of hearing fixed by the board by its resolution hereinbefore mentioned shall be not less than 25 days or more than 50 days after the passage of such resolution, and the place of hearing so fixed shall be a convenient place within the district.

(4) The final action of the board of directors under this section shall be subject to the referendum by the electors of the district according to 7-13-2276(2).

History: En. Sec. 34, Ch. 242, L. 1957; amd. Sec. 1, Ch. 263, L. 1967; R.C.M. 1947, 16-4534.

7-13-2349 and 7-13-2350 reserved.

7-13-2351. Dissolution of district. (1) Upon receipt of a petition to dissolve the district, signed by more than 50% of the freeholders of the district, the board of directors shall set a date for a public hearing on dissolution of the district. The hearing date may be not earlier than 45 days or later than 60 days after the date on which the board schedules the date of the hearing. A notice of the public hearing on the dissolution must be published as provided in 7-1-2121. The published notice must include notice to creditors of the district to present claims owed by the district to the board of directors prior to the date set for the dissolution hearing.

(2) At the dissolution hearing the board of directors shall hear testimony of all persons interested in whether the district should be dissolved and shall determine whether there are any outstanding debts of the district.

(3) After the hearing, if the board determines that dissolution of the district is in the best interest of the public and that there are no outstanding debts of the district, it may resolve to recommend that the district be dissolved. A copy of the resolution must be sent to the county commissioners of the county or counties in which the district is located.

(4) The district is dissolved after the approval of the dissolution by all the boards of county commissioners of the counties in which the district is located. An instrument approving dissolution must be filed with the clerk and recorder of the county or counties in which the district is located, who shall then cause a copy of the instrument to be filed with the secretary of state.

(5) Any assets of the district after dissolution shall be distributed according to a specific plan adopted by the board of directors after a public hearing and set forth in the resolution recommending that the district be dissolved.

History: En. Sec. 1, Ch. 545, L. 1985; amd. Sec. 2, Ch. 545, L. 1985; amd. Sec. 1, Ch. 546, L. 1987.

Part 24

Garbage and Ash Collection Districts (Repealed. Sec. 28, Ch. 770, L. 1991)

Part Compiler's Comments

Histories of Repealed Sections:

7-13-2401. En. 16-1031.1 by Sec. 1, Ch. 73, L. 1974; R.C.M. 1947, 16-1031.1.

7-13-2402. En. 16-1031.2 by Sec. 2, Ch. 73, L. 1974; R.C.M. 1947, 16-1031.2(part).

7-13-2403. En. 16-1031.2 by Sec. 2, Ch. 73, L. 1974; R.C.M. 1947, 16-1031.2(part).

7-13-2404. En. 16-1031.2 by Sec. 2, Ch. 73, L. 1974; R.C.M. 1947, 16-1031.2(part).

7-13-2405. En. 16-1031.2 by Sec. 2, Ch. 73, L. 1974; R.C.M. 1947, 16-1031.2(part).

7-13-2406. En. 16-1031.2 by Sec. 2, Ch. 73, L. 1974; R.C.M. 1947, 16-1031.2(part).

Part 25

Television Districts

7-13-2501. Authorization to create television districts. (1) Any area of the state may organize as a television district for the performance of functions provided for in this part.

(2) A television translator district may include a part or all of any county or may include areas in more than one county and may include any municipality located within such county or counties.

History: En. Secs. 2, 3, Ch. 198, L. 1961; R.C.M. 1947, 70-409, 70-410.

7-13-2502. Purposes of television district. The purposes of a television district shall be to serve the public interest, convenience, and necessity in the construction, maintenance, and operation of television translator stations and any system necessary thereto by appropriate electric or electronic means for television program distribution, but said purposes are not meant to include the construction or operation of community antenna systems, commonly known and referred to as cable TV systems.

History: En. Sec. 1, Ch. 198, L. 1961; R.C.M. 1947, 70-408.

7-13-2503. Petition to create district. (1) A petition to form a district shall be presented to the county clerk and recorder of each of the counties in which any portion of the area is situated. Petitions shall be signed by at least 51% of the registered electors who are residents of the proposed district.

(2) The petition shall state the objects of the district and designate the boundaries thereof by section and the approximate number of people to be benefited thereby and shall contain a brief description of the proposed system, including type of construction, location, and approximate cost of the installation. It shall also state that the proposed district will be conducive to the public interest, convenience, and necessity. It shall request that it be organized as a television district.

History: En. Sec. 4, Ch. 198, L. 1961; R.C.M. 1947, 70-411; amd. Sec. 1, Ch. 479, L. 1979.

7-13-2504. Filing of petition. (1) Such petition shall be filed with the county clerk and recorder of all counties in which the signers on the petition are located. If the petition is filed with more than one county clerk and recorder, each petition shall state the number of signers on it and the name of the county where the petition containing the most signers is filed.

(2) (a) At the time of filing the petition, the sponsors thereof shall cause to be deposited with the county clerk and recorder a sufficient sum of money to cover the cost of publication of all notices provided for in 7-13-2506.

(b) If the notices are not published, the deposit shall be returned to whoever deposited the funds. If there is any surplus remaining after paying for such publication as herein provided, it shall be returned to the original depositor or depositors. If a district is created, the fees so expended are an obligation of the district and shall be repaid by the district to the depositors.

History: En. Secs. 5, 6, Ch. 198, L. 1961; R.C.M. 1947, 70-412(part), 70-413(part).

7-13-2505. Processing of petition. (1) Upon the filing of such petition or petitions, the county clerk and recorder shall examine the petition and certify whether the required number of signers are found thereon. After the examination of the petition, the county clerk and recorder of any county containing the least number of signers, if more than one county is involved, shall transmit the petition to the county clerk and recorder of the county containing the most signers.

(2) Within 30 days following the receipt of such petitions, the county clerk and recorder in the county containing the most names on the petitions shall transmit the petitions to the board of county commissioners of the county in which the greater number of petitioners reside, together with his certificate and the certificates of any other county clerk and recorder as to the sufficiency thereof.

History: En. Sec. 5, Ch. 198, L. 1961; R.C.M. 1947, 70-412(part).

7-13-2506. Notice of petition. Upon receipt of a duly certified petition, the board of county commissioners shall cause the text of the petition to be published as provided in 7-1-2121. If any portion of the proposed district lies in another county, the petition and notice shall likewise be published in that county. No more than five names attached to the petition shall appear in the publication and notice, but the number of signatures shall be stated.

History: En. Sec. 6, Ch. 198, L. 1961; R.C.M. 1947, 70-413(part); amd. Sec. 23, Ch. 349, L. 1985.

7-13-2507. Hearing on petition. At the time set for hearing such petition or petitions, the board of county commissioners shall hear all persons who desire to be heard relative to the creation of a television district. The board may, if they so desire and it appears to be desirable, adjourn the meeting for not to exceed 30 days in time to further hear the petitioners and protestants, if any.

History: En. Sec. 7, Ch. 198, L. 1961; R.C.M. 1947, 70-414(part).

7-13-2508. Decision by county commissioners. After such hearing or hearings, the board of county commissioners shall adopt a resolution either creating the proposed television district or denying the petition.

History: En. Sec. 7, Ch. 198, L. 1961; R.C.M. 1947, 70-414(part).

7-13-2509. Resolution to create district. (1) If the board of county commissioners desires to create the television district, they shall adopt a resolution describing the proposed system, including type of construction, location, and type and approximate cost of any installation to be made, describing the boundaries of such district and finding that the district will be conducive to the public interest and convenience, and thereby such district shall be created.

(2) If the board passes a resolution creating such district, they shall name the district "........ television district" and file a copy of the order creating such district, if only one county is included therein, with the county clerk and recorder. If portions of more than one county are included in said district, a copy of the order shall be filed in each county. A copy of the order shall be filed with the secretary of state, for which he shall receive a fee of $5.

History: En. Secs. 7, 8, Ch. 198, L. 1961; R.C.M. 1947, 70-414(part), 70-415(part).

7-13-2510. Powers of district. In addition to any powers granted pursuant to 7-1-201, a television district organized under this part, acting through its board of trustees, may:

(1) perform all the acts and take all the necessary or proper steps to ensure that there will be a fair, efficient, and equitable distribution of television services within the area in order that all persons within the service area are supplied by means of an appropriate electrical or electronic system for television program distribution. The authorized system must provide flexibility to permit radical improvements in technical quality without rendering receivers in the area inoperative, but discontinuance of service by the district for improvements or repairs for a temporary period may not be construed as rendering the system inoperative;

(2) if necessary or proper in the furtherance of the objects of this part, acquire, build, construct, repair, own, maintain, and operate any necessary stations transmitting simultaneous visual and aural signals intended to be received by the general public, relay stations, pickup stations, or any other necessary electrical or electronic system;

(3) make contracts to compensate any owner of land or other property for the use of the land or property for the purposes of this part;

(4) make contracts with the United States, any state or municipality, or any department or agency of those entities for carrying out the general purposes for which the district is formed;

(5) acquire, by gift, devise, bequest, lease, or purchase, real and personal property, tangible or intangible, including lands, rights-of-way, and easements, necessary or convenient for its purposes;

(6) to make contracts of any lawful nature (including labor contracts or those for employees' benefits) and employ engineers, laboratory personnel, attorneys, other technical or professional assistants, and any other assistants or employees necessary to carry out the provisions of this part;

(7) issue warrants, payable at the time stated in the warrants, to evidence the obligation to repay money borrowed or any other obligation incurred by the district. Warrants draw interest at a rate fixed by the board, payable annually or semiannually as the board may prescribe.

(8) contract indebtedness or borrow money for corporate purposes and issue revenue bonds to be repaid from rates and charges, bearing interest as provided in 17-5-102 payable semiannually. The bonds may not be sold for less than par and accrued interest.

(9) prescribe tax rates for the providing of services throughout the area in accordance with the provisions of this part;

(10) prescribe installation or ready-to-serve charges to be used for any costs connected with preparation, acquisition, or construction of the system;

(11) apply for, accept, and be the holder of any permit or license issued by or required under federal or state law; and

(12) provide FM translator services if authorized as provided in 7-13-2512.

History: En. Sec. 13, Ch. 198, L. 1961; R.C.M. 1947, 70-420(part); amd. Sec. 2, Ch. 13, L. 1979; amd. Sec. 2, Ch. 479, L. 1979; amd. Sec. 5, Ch. 500, L. 1981; amd. Sec. 1, Ch. 11, L. 1983; amd. Sec. 21, Ch. 370, L. 1987; amd. Sec. 7, Ch. 543, L. 1995.

Compiler's Comments

1995 Amendment: Chapter 543 at beginning of introductory clause inserted "In addition to any powers granted pursuant to 7-1-201"; and made minor changes in style.

7-13-2511. Prohibition on operation of cable TV systems. A television district organized under this part may not perform any acts or take any steps to construct or operate community antenna systems, commonly known and referred to as cable TV systems.

History: En. Sec. 13, Ch. 198, L. 1961; R.C.M. 1947, 70-420(part).

7-13-2512. Authorization for FM translator. (1) A television district may construct and operate a broadcast FM translator facility (88 to 108 megahertz) as provided in this section.

(2) (a) A request to provide FM translator services may be initiated by a petition signed by at least 51% of the registered electors who are residents of the television district and presented to the board of county commissioners which initially established the district. The petition, its filing, and its processing are governed by 7-13-2503, 7-13-2504, and 7-13-2505.

(b) Upon receiving a certified petition, the board of county commissioners shall give notice and hold a hearing as provided in 7-13-2506 and 7-13-2507. After the hearing, the board of county commissioners shall approve or deny the petition by resolution. If the decision is to approve the petition, the resolution shall authorize the board of trustees of the district to provide the requested services and shall describe the proposed system, including the type of construction, proposed location, and estimated costs.

History: En. Sec. 1, Ch. 13, L. 1979; En. Sec. 10, Ch. 479, L. 1979.

7-13-2513 through 7-13-2520 reserved.

7-13-2521. Appointment of board of trustees. The board of county commissioners, upon the creation of the district and as a part of the order creating the district, shall appoint a board of trustees to administer the affairs of the district subject to the provisions of 7-1-201 through 7-1-203.

History: En. Sec. 9, Ch. 198, L. 1961; R.C.M. 1947, 70-416(part); amd. Sec. 8, Ch. 543, L. 1995.

Compiler's Comments

1995 Amendment: Chapter 543 near middle, after "board of", deleted "three" and at end inserted "subject to the provisions of 7-1-201 through 7-1-203"; and made minor changes in style.

7-13-2522. *(Temporary)* **Qualifications for trustee.** Each of said trustees shall be a resident of the district. *(Repealed October 1, 1996—sec. 25, Ch. 543, L. 1995.)*

History: En. Sec. 9, Ch. 198, L. 1961; R.C.M. 1947, 70-416(part); amd. Sec. 3, Ch. 479, L. 1979.

7-13-2523. *(Temporary)* **Term of office.** (1) The trustees so appointed upon creation of such district shall be appointed for staggered terms of 1, 2, and 3 years. If more than one county is involved, one of said trustees shall be appointed from the county containing that portion of the district with the fewest residents, and such trustee shall be given the 3-year term. Said trustees so appointed shall hold office for the term of their respective appointment or until their successors are appointed and qualified.

(2) At the end of the respective terms of said trustees, the board of county commissioners shall appoint a new trustee for a 3-year term. *(Repealed October 1, 1996—sec. 25, Ch. 543, L. 1995.)*

History: En. Sec. 9, Ch. 198, L. 1961; R.C.M. 1947, 70-416(part); amd. Sec. 4, Ch. 479, L. 1979.

7-13-2524. *(Temporary)* **Vacancies.** In case of a vacancy by death, resignation, removal from the district, or otherwise, a trustee shall be appointed by the board of county commissioners to fill such vacancy to the end of the term of such trustee. *(Repealed October 1, 1996—sec. 25, Ch. 543, L. 1995.)*

History: En. Sec. 9, Ch. 198, L. 1961; R.C.M. 1947, 70-416(part).

7-13-2525. *(Temporary)* **Compensation of trustees.** The board of trustees of the district shall serve without compensation but will be reimbursed for reasonable expenses incurred in the operation of the television district. *(Repealed October 1, 1996—sec. 25, Ch. 543, L. 1995.)*

History: En. Sec. 14, Ch. 198, L. 1961; R.C.M. 1947, 70-421.

7-13-2526. *(Temporary)* **Meetings of trustees.** (1) The board of trustees shall meet once a month at a regular time and place to transact the business of the district. The time and place shall be fixed by the trustees, and any change in the time and place of meetings must be given by publication of notice in a newspaper most likely to give notice to the taxpayers within such district.

(2) All meetings shall be held at some place within the area of the television district. All such meetings shall be open in their entirety to the public. *(Repealed October 1, 1996—sec. 25, Ch. 543, L. 1995.)*

History: En. Sec. 16, Ch. 198, L. 1961; R.C.M. 1947, 70-423.

7-13-2527. List of property owners. (1) A copy of the order creating the district must be delivered to the department of revenue.

(2) The department shall, on or before August 1 of each year, prepare and certify a list of all persons owning class four property within the district and deliver a copy of the list to the board of trustees of the district.

History: En. Sec. 10, Ch. 198, L. 1961; R.C.M. 1947, 70-417; amd. Sec. 3, Ch. 13, L. 1979; amd. Sec. 5, Ch. 479, L. 1979; amd. Sec. 1, Ch. 72, L. 1989; amd. Sec. 1, Ch. 773, L. 1991; amd. Sec. 5, Ch. 267, L. 1993; amd. Sec. 19, Ch. 27, Sp. L. November 1993.

7-13-2528. Financial administration of district. (1) The board of trustees shall, from any list prepared by the department of revenue as required by 7-13-2527, remove the names of any persons who have claimed exemption under this part prior to September 1 and shall prepare a budget for the expenses for the next year.

(2) The budget, together with the list of persons residing in the district and subject to the special tax after all exemptions have been allowed as provided in this part, must be presented by September 1 to the board of county commissioners, who shall levy the tax requested by the trustees. The board shall levy the tax in accordance with the trustees' request. In preparing the budget, the board of trustees shall maintain separate budgets for television services and for FM translator services and shall specify the tax to be levied on property owners for these services. The tax must be certified to the county clerk and recorder, who shall notify the department of revenue for entry of the tax on the property tax record as against those persons and collected by the county treasurer as all other taxes are collected.

(3) The county treasurer is the treasurer for the district and shall hold the taxes, as collected, in a separate fund to be disbursed upon warrants drawn by the trustees, at least two of whom shall sign any warrant for the disbursement of the funds by the county treasurer.

History: (1), (2)En. Sec. 11, Ch. 198, L. 1961; amd. Sec. 1, Ch. 79, L. 1975; Sec. 70-418, R.C.M. 1947; (3)En. Sec. 12, Ch. 198, L. 1961; Sec. 70-419, R.C.M. 1947; R.C.M. 1947, 70-418, 70-419; amd. Sec. 4, Ch. 13, L. 1979; amd. Sec. 6, Ch. 479, L. 1979; amd. Sec. 2, Ch. 72, L. 1989; amd. Sec. 20, Ch. 27, Sp. L. November 1993.

7-13-2529. Exemption for nonbenefited taxpayers. (1) The following taxpayers in the television district are exempt from payment of the tax for the support of the television services of the television district upon the filing of an affidavit setting forth one of the following grounds:

(a) The taxpayer does not receive the signal of the television translator station.

(b) The taxpayer receives direct reception from the television station from which the television translator repeats a signal.

(c) The taxpayer does not receive the translator signal directly but receives service through the medium of a community antenna system and does not directly or indirectly use any signal repeated by the television district as its source.

(d) The taxpayer receives the services through the medium of a community antenna system that has a written agreement with the district relating to the transmission of district signals.

(2) The affidavit shall be filed before September 1 with the board of trustees, who shall upon the receipt of such affidavit have the names of such persons so exempted from the tax for television services stricken from the list of taxpayers certified to the board of county commissioners. The exempted persons shall not be liable for such tax.

(3) A similar exemption is available with respect to FM translator services. The procedure provided in subsection (1) shall be utilized for the FM exemption.

(4) Any person or persons who shall make a false or fraudulent claim for exemption as provided in this section shall be guilty of a misdemeanor.

History: En. Secs. 15, 17, Ch. 198, L. 1961; R.C.M. 1947, 70-422, 70-424; amd. Sec. 5, Ch. 13, L. 1979; amd. Sec. 7, Ch. 479, L. 1979; amd. Sec. 3, Ch. 72, L. 1989; amd. Sec. 1, Ch. 538, L. 1991.

Cross-References

Misdemeanor penalty, 46-18-212.

7-13-2530 through 7-13-2540 reserved.

7-13-2541. Procedure to annex contiguous areas. The boundaries of a television district created by authority of this part may be altered and outlying areas be annexed from territory contiguous thereto in the following manner:

(1) A petition shall be signed by at least 51% of the registered electors who are residents of the area to be annexed.

(2) The petition shall designate the boundaries of the contiguous area to be annexed and ask that it be annexed to the existing television district.

(3) The petition shall be transmitted to the clerk and recorder, and the hearing and notice thereof shall be the same as provided by 7-13-2504 through 7-13-2507.

(4) After the hearing, the board of county commissioners shall adopt a resolution either annexing the area to the existing television district or denying the petition.

History: En. Sec. 1, Ch. 48, L. 1963; R.C.M. 1947, 70-426; amd. Sec. 8, Ch. 479, L. 1979.

7-13-2542. Procedure to abandon district. (1) If at any time a petition for abandonment of the television district, signed by at least 51% of the registered electors who are residents of the district, is filed with the board of trustees, the board of trustees shall forthwith notify the board or boards of county commissioners which created the district. Such board or boards of county commissioners shall by resolution immediately declare the district abandoned.

(2) All properties and money remaining after the satisfaction of all debts and obligations of such abandoned district shall be deposited to the credit of the general fund of the county. If the abandoned district embraced areas in more than one county, properties and money remaining after the satisfaction of all debts and obligations of such abandoned district shall be deposited to the credit of the general funds of such counties in proportion to the population of the portion of the district located in each county.

History: **En. Sec. 18, Ch. 198, L. 1961; R.C.M. 1947, 70-425; amd. Sec. 9, Ch. 479, L. 1979.**

Parts 26 through 29 reserved

Part 30

Consolidated Local Government Water Supply and Sewer Districts

7-13-3001. Definitions. As used in this part, the following definitions apply:

(1) "District" means a district authorized in 7-13-3002 to provide a system.

(2) "Local government" means a consolidated form of local government provided for in Title 7, chapter 3, parts 11 through 13.

(3) "System" means a public water supply, sanitary sewer system, storm sewer system, or any combination of water supply, sanitary sewer, or storm sewer systems.

History: **En. Sec. 1, Ch. 282, L. 1991.**

7-13-3002. Authorization to create district. Whenever the public convenience and necessity may require, in order to construct a water supply, sanitary sewer, or storm sewer system within a local government that would serve the inhabitants of the local government, the governing body may create a district to provide the system.

History: **En. Sec. 2, Ch. 282, L. 1991.**

7-13-3003. Resolution of intention to create district. (1) Before creating a district, the governing body shall pass a resolution of intention to create the district.

(2) The resolution must designate:

(a) the proposed name of the district;

(b) the necessity for the proposed district;

(c) a general description of the territory or lands to be included within the district, giving the boundaries of the district;

(d) the general character of the system and its proposed location;

(e) the name of the engineer who is to have charge of the work; and

(f) the estimated cost of the district.

History: **En. Sec. 3, Ch. 282, L. 1991.**

7-13-3004. Sufficiency of description in resolution of intention. In all resolutions, notices, orders, and determinations subsequent to the resolution of intention and notice of improvements, it is sufficient to briefly describe the work or the district and to refer to the resolution of intention for further particulars.

History: **En. Sec. 4, Ch. 282, L. 1991.**

7-13-3005. Notice of resolution of intention upon concurrence — hearing. (1) The governing body shall give notice of the passage of its resolution of intention to create the district.

(2) The notice must be published for 10 consecutive days in a daily newspaper published nearest to the place where the district is to be created. The governing body shall also cause a copy of the notice to be posted in three

public places within the boundaries of the district. A copy of the notice must be mailed to every person, firm, or corporation or the agent of the person, firm, or corporation owning property within the proposed district, at his last-known place of residence, upon the same day the notice is first published or posted.

(3) The notice must describe the general character of the improvement or improvements proposed to be made, state the estimated cost, and designate the time when and the place where the governing body will hear and pass upon all protests that may be made against the making or maintenance of the improvements or the creation of the district. The notice must refer to the resolution on file in the office of the local government clerk for the description of the boundaries.

History: En. Sec. 5, Ch. 282, L. 1991.

7-13-3006. Right to protest. (1) At any time within 30 days after the date of the first publication of the passage of the resolution of intention, any owner of property liable to be assessed for the system may make written protest against the proposed system.

(2) The protest must be in writing and be delivered to the county clerk, who shall endorse on the protest the date of the receipt.

History: En. Sec. 6, Ch. 282, L. 1991.

7-13-3007. Sufficient protest to bar proceedings. If protests against the proposed system are received from the owners of 50% or more of the area in the proposed district, further proceedings may not be taken by the governing body.

History: En. Sec. 7, Ch. 282, L. 1991.

7-13-3008. Hearing on protest. (1) At the next regular meeting of the governing body after the expiration of the time within which protest may be made, the governing body shall hear and pass upon all protests, and its decision is final and conclusive.

(2) In determining whether or not sufficient protests have been filed in the proposed district to prevent further proceedings, property owned by local government and school districts is considered the same as any other property in the district.

(3) The governing body may adjourn the hearing from time to time.

History: En. Sec. 8, Ch. 282, L. 1991.

7-13-3009 and 7-13-3010 reserved.

7-13-3011. Resolution creating district — power to order improvements. (1) Before ordering any of the proposed improvements, the governing body shall pass a resolution creating the district in accordance with the resolution of intention introduced and passed by the governing body.

(2) The governing body has jurisdiction to order improvements immediately upon the occurrence of one of the following:

(a) when no protests have been delivered to the county clerk within 30 days after the date of the first publication of the notice of the passing of the resolution of intention;

(b) when a protest is found by the governing body to be insufficient; or

(c) when a protest is overruled.

History: En. Sec. 9, Ch. 282, L. 1991.

7-13-3012. Governing body to administer district. (1) The members of the governing body are ex officio commissioners of the district formed under the provisions of this part and have jurisdiction over the system within the district. The governing body is responsible for the proper functioning and maintenance of the system.

(2) The governing body is responsible for the condition and maintenance of all publicly owned roads, streets, alleys, land, parks, or other thoroughfares within the boundaries of the district affected by the construction or maintenance of the structures under control and jurisdiction of the district.

History: En. Sec. 10, Ch. 282, L. 1991.

7-13-3013. Change of boundaries — limitations. (1) The governing body may by resolution make changes in the boundaries of a district as they consider reasonable and proper but may not delete any portion of the proposed area if the deletion will create an island of included or excluded lands.

(2) The governing body may not delete any portion of the proposed area that is contributing or may reasonably be expected to contribute to the pollution of any watercourse or body of water in the proposed area.

(3) For the purpose of subsection (2), it is conclusively presumed that an area that is within 1,500 feet of a proposed or existing sanitary sewer is contributing to the pollution of a watercourse in the proposed area.

History: En. Sec. 11, Ch. 282, L. 1991.

7-13-3014 and 7-13-3015 reserved.

7-13-3016. Adequate records to be maintained. The records of the district pertaining to the collection of the operation and maintenance tax levied and the records of the district pertaining to expenditures for construction of the system must be kept and maintained in the office of the treasurer of the local government where the district is located. These records must include but not be limited to a list of individual property that is delinquent in payment, together with the name of the owner or owners of the property.

History: En. Sec. 13, Ch. 282, L. 1991.

7-13-3017. Assessment of costs. To defray the cost of installing and maintaining the system under the provisions of this part, the governing body shall adopt the following method of assessment:

(1) The governing body shall assess the entire cost of the improvements against the entire district.

(2) Each lot or parcel of land assessed in the district is to be assessed with that part of the whole cost that its area bears to the area of the entire district, exclusive of streets, avenues, alleys, and public places.

History: En. Sec. 14, Ch. 282, L. 1991.

7-13-3018. Status of federal property within district. Whenever any lot, piece, or parcel of land belonging to the United States fronts upon the proposed work or improvement or is to be included within the district, the governing body shall in the resolution of intention declare that the lots, pieces, or parcels of land must be omitted from the assessment to be made to cover the cost and expenses of the work or improvement, and the cost of the work or improvement in front of the lots, pieces, or parcels of land must be paid by the local government from its general fund.

History: **En. Sec. 15, Ch. 282, L. 1991.**

7-13-3019. Restriction on assessments following change of boundaries. Nothing in 7-13-3013 permits the assessment of the cost of the system against the lands remaining in the district after a boundary change at a higher rate per square foot than the rate per square foot that would have been assessed if the entire cost of the improvements as estimated in the resolution of intention had been assessed against each lot and parcel of land included within the boundaries of the district as described in the resolution of intention unless a new resolution of intention to recreate the district is adopted and a hearing is held on the new resolution after notice as required for the original resolution of intention.

History: **En. Sec. 16, Ch. 282, L. 1991.**

7-13-3020. Resolution to assess and levy tax for making improvements. (1) To defray the cost of making improvements in the district, the governing body shall by resolution levy and assess a tax upon all property in the district created for the purpose of the system by using as a basis for the assessment the method provided for by this part.

(2) The resolution must contain a description of each lot or parcel of land, with the name of the owner, if known, and the amount of each partial payment when made and the day when the payment becomes delinquent.

(3) The resolution, signed by the governing body, must be kept on file in the office of the local government clerk.

History: **En. Sec. 17, Ch. 282, L. 1991.**

7-13-3021. Notice of resolution to assess and levy tax for making improvements — protest. (1) A notice, signed by the local government clerk and stating that the resolution levying a special assessment to defray the cost of making the improvements is on file in the office of the clerk and is subject to inspection, must be published at least once in a newspaper published nearest to where the special improvement is to be made.

(2) The notice must state the time and place in which objections to the final adoption of the resolution will be heard by the governing body.

History: **En. Sec. 19, Ch. 282, L. 1991.**

7-13-3022. Term of assessment for costs of construction. The payment of the assessment to defray the cost of constructing any improvements in the district may be spread over a term of not more than 20 years, with payment to be made in equal installments.

History: **En. Sec. 18, Ch. 282, L. 1991.**

7-13-3023. Hearing on protest. (1) The time for the hearing on protest must be not less than 5 days after the publication of the notice required by 7-13-126.

(2) At the time fixed, the governing body shall meet and hear all objections and for that purpose may adjourn from day to day. The governing body may by resolution modify the assessment in whole or in part. A copy of the resolution, certified by the clerk of the local government, must be delivered to the local government treasurer within 2 days after its passage.

History: **En. Sec. 20, Ch. 282, L. 1991.**

7-13-3024. Assessments and other charges as lien. A special assessment made and levied to defray the cost and expenses of the work for the system, together with any percentages imposed for delinquency and for cost of collection, is a lien upon the property upon which the assessment is made and levied, from and after the date of the passage of the resolution levying the assessment. The lien may only be extinguished by payment of the assessment, with all penalties, costs, and interest.

History: **En. Sec. 21, Ch. 282, L. 1991.**

7-13-3025 reserved.

7-13-3026. Charges for services. (1) The governing body may by ordinance or resolution establish just and equitable rates, charges, and rentals for the services and benefits directly or indirectly afforded by a system operated by, controlled by, and under the jurisdiction of a district formed under this part.

(2) The rates, charges, and rentals must be as nearly as possible equitable in proportion to the services and benefits rendered and may take into consideration the quantity of water supplied, the amount of sewage produced and its concentration, water pollution qualities in general, and the cost of disposal of sewage and storm waters.

History: **En. Sec. 22, Ch. 282, L. 1991.**

7-13-3027. Resolution to establish service charges — hearing — limitations and tax levy. The governing body may, subject to the provisions of Title 69, chapter 7, by resolution and after public hearing:

(1) establish the rates, charges, and rentals in amounts sufficient in each year to provide income and revenues adequate for the payment of the reasonable expense of operation and maintenance of the system;

(2) establish an additional charge for the operation and maintenance of a system and a plant; and

(3) levy and assess a tax upon the taxable valuation of each and every lot or parcel of land and improvements in the district, not in excess of 2 mills on each dollar of taxable valuation, to provide sufficient revenues for the reserve fund in the amounts necessary to meet the financial requirements of the fund as described in 7-13-3034 through 7-13-3039.

History: **En. Sec. 25, Ch. 282, L. 1991.**

7-13-3028. Hearing and notice on tax levy for operation and maintenance. (1) Not less than 30 days prior to the date of making the levy for operation and maintenance of the system, the governing body shall hold a public hearing on the resolution.

(2) Notice clearly setting forth the subject matter of the hearing must be given by the governing body by publication as provided in 7-1-2121, and notice must also be posted in three public places within the district.

History: **En. Sec. 26, Ch. 282, L. 1991.**

7-13-3029. Preparation and filing of district budget. (1) Not less than 30 days prior to the date of the public hearing on the resolution, the governing body shall prepare and file in the office of the clerk of the local government in which the district is located and in the office of the governing body a complete, detailed budget for operation and maintenance of the system, showing all income and expenditures for the year prior to the hearing and all estimated income and expenditures for the next ensuing year in which the levy is assessed.

(2) The provisions of law relating to local government budgets and expenditures must be complied with by the district.

History: En. Sec. 27, Ch. 282, L. 1991.

7-13-3030 reserved.

7-13-3031. Authorization to use federal funds. The governing body may apply for and receive from the federal government, on behalf of the district, any money that may be appropriated by congress for aiding in local public works projects. The governing body may borrow from the federal government any funds available for assisting in the planning or financing of local public works projects and repay the loan out of the money received from the tax levy provided for in this part.

History: En. Sec. 23, Ch. 282, L. 1991.

7-13-3032. Charges for costs when federal funding is sought. Notwithstanding any other section of this part or a limitation imposed in this part, when the governing body has applied for funds pursuant to 7-13-3031, the governing body may adopt a system of charges and rates to require that each recipient of services pays its proportionate share of the costs of operation, maintenance, and replacement and to require industrial users of services to pay that portion of the cost of construction of the system that is allocable to the industrial user.

History: En. Sec. 24, Ch. 282, L. 1991.

7-13-3033 reserved.

7-13-3034. Authorization for reserve fund. The governing body may, in order to secure prompt payment of any district bonds issued in payment of the cost of improvements for the district and the interest on the bonds as it becomes due, create, establish, and maintain by resolution a fund, to be designated as the “reserve fund”, for each issue of bonds.

History: En. Sec. 28, Ch. 282, L. 1991.

7-13-3035. Sources of money for reserve fund. (1) For the purpose of providing money for the reserve fund, the governing body may in its discretion, from time to time, transfer to the reserve fund from the operation and maintenance fund of the district an amount as may be considered necessary or as may be agreed upon with the holders of the bonds.

(2) Whenever there is money in the bond fund that is not required for payment of a bond of the district or interest on the bond, as much as is necessary to pay the loan referred to in 7-13-3037 must, by order of the governing body, be transferred to the reserve fund.

History: En. Sec. 29, Ch. 282, L. 1991.

7-13-3036. Transfers to reserve fund considered as loans. The amount or amounts transferred under 7-13-3035 must be considered as loans from the operation and maintenance fund to the reserve fund.

History: En. Sec. 30, Ch. 282, L. 1991.

7-13-3037. Loans from reserve fund to bond fund as lien. (1) Whenever a loan is made to the bond fund from the reserve fund, the reserve fund has a lien for the amount of the loan on:

(a) the land within the district that is delinquent in the payment of its assessments;

(b) unpaid assessments and installments of assessments on the district, whether delinquent or not; and

(c) money coming into the bond fund to the amount of the loan, together with interest on the loan from the time it was made at the rate or percentage payable by the bond or of interest on the bond for which the loan was made.

(2) If after all the bonds of the district have been fully paid and all money remaining in the bond fund has been transferred to the reserve fund, there still remains a debt from the district to the reserve fund, the governing body may foreclose the lien upon property within the district owing unpaid assessments to the district for the purpose of paying off the loan to the reserve fund.

History: En. Sec. 31, Ch. 282, L. 1991.

7-13-3038. Limitation on repayment of loan to reserve fund. Nothing in 7-13-3034 through 7-13-3039 permits the repayment of a loan to the reserve fund at any time unless all interest accrued on the bonds has been fully paid and all principal agreed to be paid in accordance with the redemption schedule as may be provided in the resolution or resolutions authorizing the bonds has been paid.

History: En. Sec. 32, Ch. 282, L. 1991.

7-13-3039. Covenants to use and maintain reserve fund. (1) In connection with the issuance of district bonds, the governing body may undertake and agree:

(a) to issue orders annually authorizing loans or advances from the reserve fund to the fund maintained for the payment of the bonds in amounts sufficient to make good any deficiency in the bond and interest accounts to the extent that money is available; and

(b) to provide money for the reserve fund pursuant to the provisions of 7-13-3026 and 7-13-3027 by establishing and collecting rates, charges, and rentals for services and benefits in amounts sufficient to provide net revenues in excess of the current costs of operation and maintenance of the system and sufficient to maintain a balance in the reserve fund as the governing body may agree to and undertake.

(2) The undertakings and agreements authorized by subsection (1) are binding upon the local government as long as any bonds or any interest on the bonds remains unpaid.

History: En. Sec. 33, Ch. 282, L. 1991.

7-13-3040 reserved.

7-13-3041. Acquisition of private water supply system. (1) If a franchise has been granted to or a contract made with any person or corporation and the person or corporation has established or maintained a system of water supply or has valuable water rights or a supply of water desired by the district for supplying the district with water, the governing body granting the franchise, entering the contract, or desiring the water supply shall, by the passage of a resolution, give notice to the person or corporation that it desires to purchase the plant, franchise, or water supply of the person or corporation.

(2) The governing body passing a resolution as provided in subsection (1) may purchase the plant, franchise, or water supply upon terms agreed to by the parties.

(3) In case agreement is not reached in accordance with subsection (2), the governing body may take the plant, franchise, or water supply by eminent domain in accordance with Title 70, chapters 30 and 31.

History: En. Sec. 34, Ch. 282, L. 1991.

7-13-3042 reserved.

7-13-3043. Applicable provisions of laws relating to rural improvement districts. The provisions of 7-12-2101, 7-12-2106, 7-12-2107, 7-12-2110, 7-12-2115 through 7-12-2120, 7-12-2131 through 7-12-2140, 7-12-2153, 7-12-2154, 7-12-2161 through 7-12-2165, 7-12-2166(2), 7-12-2168(2), 7-12-2169, and 7-12-2171 through 7-12-2174 pertaining to rural improvement districts apply to this part unless in conflict with the provisions of this part.

History: En. Sec. 12, Ch. 282, L. 1991.

Parts 31 through 40 reserved

Part 41

General Provisions Related to Municipal Utility Services

Part Cross-References

Water quality permits, Title 75, ch. 5, part 4.

Sewage system operation, 75-5-511 through 75-5-515.

7-13-4101. Authority to permit laying of utility mains. (1) The city or town council has power to permit the use of the streets and alleys of the city or town for the purpose of laying down gas, water, and other mains, but no excavations must be made for such purpose without the permission of the council or its authorized officer.

(2) The streets and alleys must be placed in as good condition by the person or corporation making the excavation as they were before the excavation was made and the mains laid down. In default thereof, the council may order the same to be done at the expense of such person or corporation.

History: En. Subd. 73, Sec. 5039, R.C.M. 1921; amd. Sec. 1, Ch. 115, L. 1925; amd. Sec. 1, Ch. 20, L. 1927; re-en. Sec. 5039.72, R.C.M. 1935; R.C.M. 1947, 11-975.

7-13-4102. Authority to acquire natural gas system — indebtedness permitted. (1) The city or town council has power to contract an indebtedness of a city or town upon the credit thereof by borrowing money or issuing bonds for the construction, purchase, or development of an adequate supply of natural gas and to construct or purchase a system of gaslines for the distribution thereof to the inhabitants of the city or town or vicinity.

(2) No money may be borrowed or bonds issued for the purposes specified in this section until the proposition has been submitted to the vote of the taxpayers of the city or town affected thereby and the majority vote cast in its favor.

History: **En. Sec. 1, Ch. 128, l. 1927; re-en. Sec. 5039.85, R.C.M. 1935; amd. Sec. 22, Ch. 566, L. 1977; R.C.M. 1947, 11-988(part).**

7-13-4103. Limitation on indebtedness for acquisition of natural gas system. The total amount of indebtedness authorized to be contracted in any form, including the then-existing indebtedness, must not at any time exceed 17% of the total taxable value of the property of the city or town subject to taxation as ascertained by the last assessment for state and county taxes.

History: **En. Sec. 1, Ch. 128, l. 1927; re-en. Sec. 5039.85, R.C.M. 1935; amd. Sec. 22, Ch. 566, L. 1977; R.C.M. 1947, 11-988(part); amd. Sec. 49, Ch. 614, L. 1981.**

7-13-4104. Inspection and measurement of gas, light, and electric or other power systems. The council of any incorporated city or town shall have power by ordinance to provide for and regulate the inspection and the measurement of gas, light, and electric or other power sold within its limits or brought into or carried through any such city or town.

History: **En. Sec. 1, Ch. 57, L. 1907; Sec. 3260, Rev. C. 1907; re-en. Sec. 5040, R.C.M. 1921; re-en. Sec. 5040, R.C.M. 1935; R.C.M. 1947, 11-989.**

7-13-4105. Regulation of vaults, cisterns, hydrants, pumps, sewers, and gutters. The city or town council has power to regulate the construction, use, and repair of vaults, cisterns, hydrants, pumps, sewers, and gutters.

History: **En. Subd. 24, Sec. 5039, R.C.M. 1921; amd. Sec. 1, Ch. 115, L. 1925; amd. Sec. 1, Ch. 20, L. 1927; re-en. Sec. 5039.23, R.C.M. 1935; R.C.M. 1947, 11-926.**

7-13-4106. Erection of poles, wires, rods, and cables. The city or town council has power to regulate or suppress the erection of poles and the stringing of wires, rods, or cables in the streets or alleys or within the limits of any city or town.

History: **En. Subd. 43, Sec. 5039, R.C.M. 1921; amd. Sec. 1, Ch. 115, L. 1925; amd. Sec. 1, Ch. 20, L. 1927; re-en. Sec. 5039.42, R.C.M. 1935; R.C.M. 1947, 11-945.**

7-13-4107. Protection of private waste disposal service in municipality. A municipality, as of January 1, 1979, that receives garbage and solid waste disposal services from a private motor carrier authorized by the public service commission to provide such service may not, by ordinance or otherwise, elect to provide exclusive garbage and solid waste service unless the municipality pays the private motor carrier fair market value for his equipment or unless the municipality delays commencing the public service for a period of 5 years from the date of the decision by the municipality to provide the garbage and solid waste services. The private motor carrier shall be given notice of the decision by the municipality to provide exclusive garbage and solid waste services no later than 10 days after the decision has been made by the municipality.

History: **En. Sec. 1, Ch. 448, L. 1979.**

Part 42
Public Sewer Systems

7-13-4201. Establishment of sewer systems. A sewer system may be established in a city or town, which system may be divided into public, district, and private sewers.

History: En. Sec. 15, Ch. 89, L. 1913; re-en. Sec. 5239, R.C.M. 1921; amd. Sec. 1, Ch. 149, L. 1933; re-en. Sec. 5239, R.C.M. 1935; amd. Sec. 3, Ch. 100, L. 1973; R.C.M. 1947, 11-2216(part).

7-13-4202. Construction of public sewers. Public sewers may be established and constructed along the principal course of drainage at such times, to such an extent, of such dimensions and materials, and under such regulations as may be prescribed by the council. There may be constructed such branches and extensions of sewers already constructed or to be constructed as may be considered expedient.

History: En. Sec. 15, Ch. 89, L. 1913; re-en. Sec. 5239, R.C.M. 1921; amd. Sec. 1, Ch. 149, L. 1933; re-en. Sec. 5239, R.C.M. 1935; amd. Sec. 3, Ch. 100, L. 1973; R.C.M. 1947, 11-2216(part).

7-13-4203. Financing of public sewers. (1) To defray the cost of such public sewers, the city or town council may appropriate moneys therefor from the general or sewer fund or by availing itself of money derived from a bond issue authorized by the constitution and laws of the state.

(2) It is further provided that when a public or main sewer also serves as a district sewer, the city council may assess the property bordering or abutting upon such public sewer, either at the time of its construction or at any future time, for an amount equal to the estimated cost of such district sewer capable of accommodating such property.

History: En. Sec. 15, Ch. 89, L. 1913; re-en. Sec. 5239, R.C.M. 1921; amd. Sec. 1, Ch. 149, L. 1933; re-en. Sec. 5239, R.C.M. 1935; amd. Sec. 3, Ch. 100, L. 1973; R.C.M. 1947, 11-2216(2).

7-13-4204. Rental charges for use of sewer system — election required. (1) Upon being petitioned by 5% of the qualified electors, the city council shall submit to a vote to the qualified electors, at the annual municipal election or at a special election held in conjunction with a regular or special election, the question of whether or not the city council may establish and collect rentals for the use of the sewer system, may fix the scale of the rentals, and may prescribe the manner and time at which the rentals must be paid:

(a) to provide the sewer fund;

(b) to provide for the retirement of the bonds and the payment of the interest on the bonds; or

(c) for any purpose mentioned in this section.

(2) If a majority of votes is cast in favor of the proposition, then the city or town council may establish and collect rentals for the use of the sewer system, may fix the scale of rentals, may prescribe the manner and time at which the rentals should be paid, and may change the scale of rentals from time to time as considered advisable.

(3) The revenue provided in this section are in addition to and not exclusive of other revenue that may be legally collected for sewer payment.

History: En. Sec. 15, Ch. 89, L. 1913; re-en. Sec. 5239, R.C.M. 1921; amd. Sec. 1, Ch. 149, L. 1933; re-en. Sec. 5239, R.C.M. 1935; amd. Sec. 3, Ch. 100, L. 1973; R.C.M. 1947, 11-2216(part); amd. Sec. 46, Ch. 387, L. 1995.

Compiler's Comments

1995 Amendment: Chapter 387 in (1), after "special election", substituted "held in conjunction with a regular or special election" for "called for that purpose"; and made minor changes in style.

7-13-4205. Determination of rental charge. (1) The total revenue to be collected from all of the above sources in a given year shall be provided for by the council in such a manner as to provide funds for the payment of all bond issues and interest thereon, as well as for all necessary expenses of the operation, maintenance, and repair of any such sewer system.

(2) For the purpose of making such rental charges equitable, property benefited thereby may be classified, taking into consideration the volume and character of sewage or waste and the nature of the use made of such sewage facilities.

History: En. Sec. 15, Ch. 89, L. 1913; re-en. Sec. 5239, R.C.M. 1921; amd. Sec. 1, Ch. 149, L. 1933; re-en. Sec. 5239, R.C.M. 1935; amd. Sec. 3, Ch. 100, L. 1973; R.C.M. 1947, 11-2216(part).

7-13-4206. Procedure to collect rentals. Said rentals shall be collected or taxed against the property in like manner as water rentals are collected and taxed or by such procedure as may be prescribed by the city or town council.

History: En. Sec. 15, Ch. 89, L. 1913; re-en. Sec. 5239, R.C.M. 1921; amd. Sec. 1, Ch. 149, L. 1933; re-en. Sec. 5239, R.C.M. 1935; amd. Sec. 3, Ch. 100, L. 1973; R.C.M. 1947, 11-2216(part).

7-13-4207. Special fund for sewer rentals. (1) The funds received from the collection of sewer rentals shall be kept as a separate and distinct fund by the city treasurer, subject only to disbursement by order of the council.

(2) This fund shall be used for:

(a) the payment of the cost of management, maintenance, operation, and repair of the sewage system, including treatment and disposal works;

(b) for the creation of a sinking fund for the retirement of any indebtedness; and

(c) for the payment of interest on any such indebtedness.

(3) Any surplus in such fund may be used for the enlargement or replacement of the same and for the payment of the interest on any debt incurred for the construction of such sewage system, including sewage pumping, treatment, and disposal works, and for retiring such debt but shall not be used for the extension of a sewage system to serve unsewered areas or for any purpose other than one or more of those specified above.

History: En. Sec. 15, Ch. 89, L. 1913; re-en. Sec. 5239, R.C.M. 1921; amd. Sec. 1, Ch. 149, L. 1933; re-en. Sec. 5239, R.C.M. 1935; amd. Sec. 3, Ch. 100, L. 1973; R.C.M. 1947, 11-2216(4).

7-13-4208. Procedure to challenge rates. Any 25 or more electors of a municipality may file complaint with the public service commission to the effect that the rental charges so fixed are unreasonable or unjustly discriminatory. The public service commission shall, upon public hearing thereon, file its findings and determination, stating therein in what respect, if any, said rental charges are unreasonable or unjustly discriminatory. The municipality at interest shall forthwith readjust its rental charges so as to remove any unreasonable or unjustly discriminatory features so found by the public service commission.

History: En. Sec. 15, Ch. 89, L. 1913; re-en. Sec. 5239, R.C.M. 1921; amd. Sec. 1, Ch. 149, L. 1933; re-en. Sec. 5239, R.C.M. 1935; amd. Sec. 3, Ch. 100, L. 1973; R.C.M. 1947, 11-2216(5).

Part 43
Municipal Sewage and/or Water Systems

7-13-4301. Establishment of sewage and water systems. Any city or town may:

(1) establish, build, construct, reconstruct, or extend:

(a) a storm or sanitary sewerage system;

(b) a plant or plants for treatment or disposal of sewage from the city or town;

(c) a water supply or distribution system; or

(d) any combination of systems; and

(2) operate and maintain the facilities for public use.

History: En. Sec. 1, Ch. 149, L. 1943; amd. Sec. 1, Ch. 100, L. 1947; amd. Sec. 1, Ch. 98, L. 1955; amd. Sec. 7, Ch. 158, L. 1971; R.C.M. 1947, 11-2217(part); amd. Sec. 5, Ch. 453, L. 1993.

7-13-4302. Repealed. Sec. 7, Ch. 453, L. 1993.

History: En. Sec. 1, Ch. 149, L. 1943; amd. Sec. 1, Ch. 100, L. 1947; amd. Sec. 1, Ch. 98, L. 1955; amd. Sec. 7, Ch. 158, L. 1971; R.C.M. 1947, 11-2217(part).

7-13-4303. Repealed. Sec. 7, Ch. 453, L. 1993.

History: En. Sec. 1, Ch. 149, L. 1943; amd. Sec. 1, Ch. 100, L. 1947; amd. Sec. 1, Ch. 98, L. 1955; amd. Sec. 7, Ch. 158, L. 1971; R.C.M. 1947, 11-2217(part).

7-13-4304. Authority to charge for services. (1) The governing body of a municipality operating a municipal water or sewer system shall fix and establish, by ordinance or resolution, and collect rates, rentals, and charges for the services, facilities, and benefits directly or indirectly afforded by the system, taking into account services provided and benefits received.

(2) Sewer charges may take into consideration the quantity of sewage produced and its concentration and water pollution qualities in general and the cost of disposal of sewage and storm waters. The charges may be fixed on the basis of water consumption or any other equitable basis the governing body considers appropriate. The rates for charges may be fixed in advance or otherwise and shall be uniform for like services in all parts of the municipality. If the governing body determines that the sewage treatment or storm water disposal prevents pollution of sources of water supply, the sewer charges may be established as a surcharge on the water bills of water consumers or on any other equitable basis of measuring the use and benefits of the facilities and services.

(3) An original charge for the connecting sewerline between the lot line and the sewer main may be assessed when the connecting sewerline is installed.

(4) The water and sewer rates, charges, or rentals shall be as nearly as possible equitable in proportion to the services and benefits rendered.

History: Ap. p. Sec. 3, Ch. 149, L. 1943; amd. Sec. 3, Ch. 98, L. 1955; Sec. 11-2219, R.C.M. 1947; Ap. p. Sec. 1, Ch. 149, L. 1943; amd. Sec. 1, Ch. 100, L. 1947; amd. Sec. 1, Ch. 98, L. 1955; amd. Sec. 7, Ch. 158, L. 1971; Sec. 11-2217, R.C.M. 1947; Ap. p. Sec. 1, Ch. 411, L. 1973; Sec. 84-4726.1, R.C.M. 1947; R.C.M. 1947, 11-2217(part), 11-2219(part), 84-4726.1(part); amd. Sec. 25, Ch. 251, L. 1979.

7-13-4305. Consumers required to pay for services. (1) No person, firm, or corporation shall be permitted to use said system unless they pay the full and established rate for said service.

(2) No person may have service reestablished after it is discontinued pursuant to 7-13-4306 unless they have paid the full amount past due, any interest or penalty on such past-due amount, and any required reestablishment deposit.

History: En. Sec. 5, Ch. 149, L. 1943; R.C.M. 1947, 11-2221(part); amd. Sec. 1, Ch. 115, L. 1987.

7-13-4306. Effect of failure to pay charges. In the event of nonpayment of charges for either water or sewer service and benefits to any premises, the governing body may direct the supply of water or provision of sewer service to such premises to be discontinued until such charges are paid.

History: En. Sec. 1, Ch. 149, L. 1943; amd. Sec. 1, Ch. 100, L. 1947; amd. Sec. 1, Ch. 98, L. 1955; amd. Sec. 7, Ch. 158, L. 1971; R.C.M. 1947, 11-2217(part); amd. Sec. 2, Ch. 115, L. 1987.

7-13-4307. Establishment of amount of charges. The rates and charges established for the services and facilities afforded by this system shall be sufficient in each year to provide income and revenues adequate for the payment of the reasonable expense of operation and maintenance and for the payment of the sums required to be paid into the sinking fund and for the accumulation of such reserves and the making of such expenditures for depreciation and replacement of said system as shall be determined necessary from time to time by the governing body or as shall have been covenanted in the ordinances and resolutions authorizing the outstanding bonds.

History: En. Sec. 3, Ch. 149, L. 1943; amd. Sec. 3, Ch. 98, L. 1955; R.C.M. 1947, 11-2219(part).

7-13-4308. Change and readjustment of charges. The governing body shall have the right to change and readjust from time to time the rates and charges so fixed and established, provided the aggregate of such rates and charges shall always be sufficient to meet the requirements mentioned in 7-13-4307.

History: En. Sec. 3, Ch. 149, L. 1943; amd. Sec. 3, Ch. 98, L. 1955; R.C.M. 1947, 11-2219(part).

7-13-4309. Procedure to collect sewer charges. (1) The sewer charges must be collected by the treasurer.

(2) On or before July 15 of each year, notice must be given by the city treasurer or town clerk to the owners of all lots or parcels of real estate to which sewer service has been furnished prior to July 1 by the city or town. The notice must specify the assessment owing and in arrears at the time of giving notice. The notice must be in writing and must state the amount of arrearage, including any penalty and interest assessed pursuant to the provisions of the city or town ordinance, and that unless the amount is paid by August 15, the amount will be levied as a tax against the lot or parcel of real estate to which sewer service was furnished and for which payment is delinquent. The notice must also state that the city or town may by suit collect past-due assessments, interest, and penalties, as a debt owing the city or town, in any court of competent jurisdiction, including city court. The notice may be delivered to the owner personally or by letter addressed to the owner at the post-office address of the owner as shown in property tax records maintained by the department of revenue.

(3) (a) Except as provided in subsection (3)(b), on September 1, the city treasurer or town clerk shall certify and file with the department of revenue a list of all lots or parcels of real estate, giving the legal description of the lot or parcel, to the owners of which notices of arrearage in payments were given and which arrearage remains unpaid and stating the amount of the arrearage, including any penalty and interest. The department of revenue shall insert the amount as a tax against the lot or parcel of real estate.

(b) In cities where the council has provided by ordinance for the collection of taxes, the city treasurer shall collect the delinquent amount, including penalty and interest, as a tax against the lot or parcel of real estate to which sewer service was furnished and payment for which is delinquent.

(4) A city or town may, in addition to pursuing the collection of assessments in the same manner as a tax, bring suit in any court of competent jurisdiction, including city court, to collect the amount due and owing, including penalties and interest, as a debt owing the city or town.

History: En. 84-4726.1 by Sec. 1, Ch. 411, L. 1973; R.C.M. 1947, 84-4726.1(part); amd. Sec. 1, Ch. 114, L. 1987; amd. Sec. 3, Ch. 115, L. 1987; amd. Sec. 21, Ch. 27, Sp. L. November 1993.

7-13-4310. Role of public service commission unaffected. Nothing contained in this part shall be construed to change or affect the powers and the duties of the public service commission of Montana prescribed in Title 69, chapters 1, 2, and 3.

History: En. Sec. 5, Ch. 98, L. 1955; R.C.M. 1947, 11-2220.1.

7-13-4311. Authorization to furnish water and sewer services to industrial consumers. (1) Subject to the provisions of subsection (2), the city or town council of any city or town within Montana that owns and operates a municipal water system and/or a municipal sewage system to furnish water and/or sewage services to the inhabitants of such city or town as a public utility shall, in addition to all other powers, have power to furnish water from such water system and sewage services from such sewage system:

(a) to any person, factory, or other industry located within the corporate limits of such city or town; or

(b) to any person, factory, or other industry located outside the corporate limits of such city or town.

(2) (a) The services authorized by subsection (1) shall be furnished at reasonable rates, filed by the city or town council and approved by the public service commission.

(b) Delivery of water and delivery of sewage services by any such city or town to or for the use of any person, factory, or other industry located outside the corporate limits of such city or town shall be made within or at the boundary line of the corporate limits of such city or town or from any existing waterline or sewerline of such city or town located outside of the corporate limits of such city or town, except as hereinafter provided.

History: En. Sec. 1, Ch. 71, L. 1925; amd. Sec. 1, Ch. 134, L. 1929; re-en. Sec. 5040.1, R.C.M. 1935; amd. Sec. 1, Ch. 6, L. 1955; amd. Sec. 1, Ch. 63, L. 1957; amd. Sec. 1, Ch. 194, L. 1961; amd. Sec. 1, Ch. 229, L. 1971; R.C.M. 1947, 11-1001(1).

7-13-4312. Authorization to furnish water and sewer services to persons located outside municipality. The city council of any city within Montana that owns and operates a municipal water system and/or a municipal sewer system to furnish water and sewer services to the inhabitants of such city as a public utility shall, in addition to all other powers, have power to furnish water from such water system and sewage services from such sewer system to the inhabitants or to any person, factory, industry, or producer of farm or other products located outside of the corporate limits of such city at reasonable rates filed by the city or town council and approved, when otherwise required by statute, by the public service commission. Such city council is further empowered to make collections for furnishing water and sewer services in the same manner as collections are made within the corporate limits.

History: **En. Sec. 1, Ch. 71, L. 1925; amd. Sec. 1, Ch. 134, L. 1929; re-en. Sec. 5040.1, R.C.M. 1935; amd. Sec. 1, Ch. 6, L. 1955; amd. Sec. 1, Ch. 63, L. 1957; amd. Sec. 1, Ch. 194, L. 1961; amd. Sec. 1, Ch. 229, L. 1971; R.C.M. 1947, 11-1001(2).**

7-13-4313. Illegal use of water or sewer system. Any person, firm, or corporation residing either inside or outside of the corporate limits of a city owning a municipal water system and/or a municipal sewer system which furnishes water or sewer services as a public utility who shall willfully turn on the waterline or sewerline after the same shall have been shut off by or under the direction of the city for nonpayment of water charges or sewer charges or who shall unlawfully take water from such water system or shall unlawfully make use of such sewer system shall be guilty of a misdemeanor.

History: **En. Sec. 1, Ch. 71, L. 1925; amd. Sec. 1, Ch. 134, L. 1929; re-en. Sec. 5040.1, R.C.M. 1935; amd. Sec. 1, Ch. 6, L. 1955; amd. Sec. 1, Ch. 63, L. 1957; amd. Sec. 1, Ch. 194, L. 1961; amd. Sec. 1, Ch. 229, L. 1971; R.C.M. 1947, 11-1001(3).**

Cross-References

Misdemeanor penalty, 46-18-212.

7-13-4314. Annexation as a requirement for receiving service. Any person, firm, or corporation receiving water or sewer service outside of incorporated city limits may be required by the city or town, as a condition to initiate such service, to consent to annexation of the tract of property served by the city or town. The consent to annexation is limited to that tract or parcel or portion of tract or parcel that is clearly and immediately, and not potentially, being serviced by the water or sewer service.

History: **En. Sec. 1, Ch. 71, L. 1925; amd. Sec. 1, Ch. 134, L. 1929; re-en. Sec. 5040.1, R.C.M. 1935; amd. Sec. 1, Ch. 6, L. 1955; amd. Sec. 1, Ch. 63, L. 1957; amd. Sec. 1, Ch. 194, L. 1961; amd. Sec. 1, Ch. 229, L. 1971; R.C.M. 1947, 11-1001(4).**

7-13-4315 through 7-13-4320 reserved.

7-13-4321 through 7-13-4333. Repealed. Sec. 7, Ch. 453, L. 1993.

Compiler's Comments

Histories of Repealed Sections:

7-13-4321. En. Sec. 2, Ch. 149, L. 1943; amd. Sec. 1, Ch. 146, L. 1951; amd. Sec. 2, Ch. 98, L. 1955; amd. Sec. 1, Ch. 38, L. 1957; amd. Sec. 1, Ch. 51, L. 1963; amd. Sec. 13, Ch. 234, L. 1971; R.C.M. 1947, 11-2218(part); amd. Sec. 45, Ch. 575, L. 1981.

7-13-4322. En. Sec. 2, Ch. 149, L. 1943; amd. Sec. 1, Ch. 146, L. 1951; amd. Sec. 2, Ch. 98, L. 1955; amd. Sec. 1, Ch. 38, L. 1957; amd. Sec. 1, Ch. 51, L. 1963; amd. Sec. 13, Ch. 234, L. 1971; R.C.M. 1947, 11-2218(7).

7-13-4323. En. Sec. 2, Ch. 149, L. 1943; amd. Sec. 1, Ch. 146, L. 1951; amd. Sec. 2, Ch. 98, L. 1955; amd. Sec. 1, Ch. 38, L. 1957; amd. Sec. 1, Ch. 51, L. 1963; amd. Sec. 13, Ch. 234, L. 1971; R.C.M. 1947, 11-2218(2).

7-13-4324. En. Sec. 2, Ch. 149, L. 1943; amd. Sec. 1, Ch. 146, L. 1951; amd. Sec. 2, Ch. 98, L. 1955; amd. Sec. 1, Ch. 38, L. 1957; amd. Sec. 1, Ch. 51, L. 1963; amd. Sec. 13, Ch. 234, L. 1971; R.C.M. 1947, 11-2218(part).

7-13-4325. En. Sec. 4, Ch. 149, L. 1943; amd. Sec. 4, Ch. 98, L. 1955; R.C.M. 1947, 11-2220(part).

7-13-4326. En. Sec. 4, Ch. 149, L. 1943; amd. Sec. 4, Ch. 98, L. 1955; R.C.M. 1947, 11-2220(part).

7-13-4327. En. Sec. 4, Ch. 149, L. 1943; amd. Sec. 4, Ch. 98, L. 1955; R.C.M. 1947, 11-2220(part).

7-13-4328. En. Sec. 2, Ch. 149, L. 1943; amd. Sec. 1, Ch. 146, L. 1951; amd. Sec. 2, Ch. 98, L. 1955; amd. Sec. 1, Ch. 38, L. 1957; amd. Sec. 1, Ch. 51, L. 1963; amd. Sec. 13, Ch. 234, L. 1971; R.C.M. 1947, 11-2218(3), (4).

7-13-4329. En. Sec. 2, Ch. 149, L. 1943; amd. Sec. 1, Ch. 146, L. 1951; amd. Sec. 2, Ch. 98, L. 1955; amd. Sec. 1, Ch. 38, L. 1957; amd. Sec. 1, Ch. 51, L. 1963; amd. Sec. 13, Ch. 234, L. 1971; R.C.M. 1947, 11-2218(5).

7-13-4330. En. Sec. 5, Ch. 149, L. 1943; R.C.M. 1947, 11-2221(part).

7-13-4331. En. Sec. 4, Ch. 149, L. 1943; amd. Sec. 4, Ch. 98, L. 1955; R.C.M. 1947, 11-2220(part).

7-13-4332. En. Sec. 5, Ch. 149, L. 1943; R.C.M. 1947, 11-2221(part).

7-13-4333. En. Sec. 5, Ch. 149, L. 1943; R.C.M. 1947, 11-2221(part).

7-13-4334 through 7-13-4340 reserved.

7-13-4341 through 7-13-4345. Repealed. Sec. 7, Ch. 453, L. 1993.

Compiler's Comments

Histories of Repealed Sections:

7-13-4341. En. Sec. 2, Ch. 149, L. 1943; amd. Sec. 1, Ch. 146, L. 1951; amd. Sec. 2, Ch. 98, L. 1955; amd. Sec. 1, Ch. 38, L. 1957; amd. Sec. 1, Ch. 51, L. 1963; amd. Sec. 13, Ch. 234, L. 1971; R.C.M. 1947, 11-2218(part).

7-13-4342. En. Sec. 2, Ch. 149, L. 1943; amd. Sec. 1, Ch. 146, L. 1951; amd. Sec. 2, Ch. 98, L. 1955; amd. Sec. 1, Ch. 38, L. 1957; amd. Sec. 1, Ch. 51, L. 1963; amd. Sec. 13, Ch. 234, L. 1971; R.C.M. 1947, 11-2218(8).

7-13-4343. En. Sec. 2, Ch. 149, L. 1943; amd. Sec. 1, Ch. 146, L. 1951; amd. Sec. 2, Ch. 98, L. 1955; amd. Sec. 1, Ch. 38, L. 1957; amd. Sec. 1, Ch. 51, L. 1963; amd. Sec. 13, Ch. 234, L. 1971; R.C.M. 1947, 11-2218(part).

7-13-4344. En. Sec. 2, Ch. 149, L. 1943; amd. Sec. 1, Ch. 146, L. 1951; amd. Sec. 2, Ch. 98, L. 1955; amd. Sec. 1, Ch. 38, L. 1957; amd. Sec. 1, Ch. 51, L. 1963; amd. Sec. 13, Ch. 234, L. 1971; R.C.M. 1947, 11-2218(9).

7-13-4345. En. Sec. 2, Ch. 149, L. 1943; amd. Sec. 1, Ch. 146, L. 1951; amd. Sec. 2, Ch. 98, L. 1955; amd. Sec. 1, Ch. 38, L. 1957; amd. Sec. 1, Ch. 51, L. 1963; amd. Sec. 13, Ch. 234, L. 1971; R.C.M. 1947, 11-2218(10).

Part 44

Water Supply and Regulation

7-13-4401. Water regulation. The city or town council has power to provide for the cleaning of waters, watercourses, and streams within the city or to alter, straighten, or widen the same and to provide for the draining and filling in of ponds, wells, or shafts on private property when necessary to the public health or public welfare.

History: En. Subd. 15, Sec. 5039, R.C.M. 1921; amd. Sec. 1, Ch. 115, L. 1925; amd. Sec. 1, Ch. 20, L. 1927; re-en. Sec. 5039.14, R.C.M. 1935; R.C.M. 1947, 11-917.

Cross-References

Water quality, Title 75, ch. 5.

Water conservation and flood control, Title 76, ch. 5, part 11.

7-13-4402. Obtaining municipal water supply. The city or town council has power to adopt, enter into, and carry out means for securing a supply of water for the use of a city or town or its inhabitants.

History: En. Subd. 79, Sec. 5039, R.C.M. 1921; amd. Sec. 1, Ch. 115, L. 1925; amd. Sec. 1, Ch. 20, L. 1927; re-en. Sec. 5039.78, R.C.M. 1935; R.C.M. 1947, 11-981.

7-13-4403. Acquisition of private water supply system. (1) It is provided that whenever a franchise has been granted to or a contract made with any person or persons, corporation, or corporations and such person or persons, corporation, or corporations, in pursuance thereof or otherwise, have established or maintained a system of water supply or have valuable water rights or a supply of water desired by the city or town for supplying the city or town with water, the city or town granting such franchise or entering in such contract or desiring such water supply shall, by the passage of an ordinance, give notice to such person or persons, corporation, or corporations that it desires to purchase the plant and franchise and water supply of such person or persons, corporation, or corporations.

(2) The city or town shall have the right to so purchase the plant or water supply upon such terms as the parties agree.

History: En. Subd. 64, Sec. 5039, R.C.M. 1921; amd. Sec. 1, Ch. 115, L. 1925; amd. Sec. 1, Ch. 20, L. 1927; re-en. Sec. 5039.63, R.C.M. 1935; amd. Sec. 1, Ch. 35, L. 1947; amd. Sec. 1, Ch. 152, L. 1953; amd. Sec. 1, Ch. 34, L. 1955; amd. Sec. 1, Ch. 38, L. 1959; amd. Sec. 1, Ch. 158, L. 1963; amd. Sec. 1, Ch. 100, L. 1973; R.C.M. 1947, 11-966(part).

7-13-4404. Use of eminent domain powers to acquire water supply system. (1) In case agreement is not reached pursuant to 7-13-4403, then the city or town shall proceed to acquire the plant or water supply under the laws relating to the taking of private property for public use.

(2) Any city or town acquiring property under the laws relating to the taking of private property for public use shall make payment to the owner or owners of the plant or water supply, of the value thereof legally determined, within 6 months from and after final judgment is entered in the condemnation proceedings.

History: En. Subd. 64, Sec. 5039, R.C.M. 1921; amd. Sec. 1, Ch. 115, L. 1925; amd. Sec. 1, Ch. 20, L. 1927; re-en. Sec. 5039.63, R.C.M. 1935; amd. Sec. 1, Ch. 35, L. 1947; amd. Sec. 1, Ch. 152, L. 1953; amd. Sec. 1, Ch. 34, L. 1955; amd. Sec. 1, Ch. 38, L. 1959; amd. Sec. 1, Ch. 158, L. 1963; amd. Sec. 1, Ch. 100, L. 1973; R.C.M. 1947, 11-966(part).

Cross-References

Eminent domain, Art. II, sec. 29, Mont. Const.

Eminent domain, Title 70, ch. 30.

7-13-4405. Acquisition of water rights and other necessary property. For the purpose of providing the city or town with an adequate water supply for municipal and domestic purposes, the city or town council shall procure appropriate water rights and title to the same and the necessary real and personal property to make said rights and supply available, by purchase, appropriation, location, condemnation, or otherwise.

History: En. Subd. 64, Sec. 5039, R.C.M. 1921; amd. Sec. 1, Ch. 115, L. 1925; amd. Sec. 1, Ch. 20, L. 1927; re-en. Sec. 5039.63, R.C.M. 1935; amd. Sec. 1, Ch. 35, L. 1947; amd. Sec. 1, Ch. 152, L. 1953; amd. Sec. 1, Ch. 34, L. 1955; amd. Sec. 1, Ch. 38, L. 1959; amd. Sec. 1, Ch. 158, L. 1963; amd. Sec. 1, Ch. 100, L. 1973; R.C.M. 1947, 11-966(part).

Cross-References

Permit to appropriate water, Title 85, ch. 2, part 3.

Reservation of waters by political subdivision, 85-2-316.

7-13-4406. Control over territory occupied by water supply system — taxation and condemnation powers. Cities and towns shall have jurisdiction and control over the territory occupied by their public works; over and along the line of reservoirs, streams, trenches, pipes, drains, and other appurtenances used in the construction and operation of such works; and also over the source of streams from which water is taken for the enforcement of its sanitary ordinances, the abatement of nuisances, and the general preservation of the purity of its water supply, with power to enact all ordinances and regulations necessary to carry the powers hereby conferred into effect. For this purpose, the city or town shall be authorized to condemn private property in the manner provided by law and shall have authority to levy a just and equitable tax on all consumers of water for the purpose of defraying the expenses of its procurement.

History: **En. Subd. 64, Sec. 5039, R.C.M. 1921; amd. Sec. 1, Ch. 115, L. 1925; amd. Sec. 1, Ch. 20, L. 1927; re-en. Sec. 5039.63, R.C.M. 1935; amd. Sec. 1, Ch. 35, L. 1947; amd. Sec. 1, Ch. 152, L. 1953; amd. Sec. 1, Ch. 34, L. 1955; amd. Sec. 1, Ch. 38, L. 1959; amd. Sec. 1, Ch. 158, L. 1963; amd. Sec. 1, Ch. 100, L. 1973; R.C.M. 1947, 11-966(4).**

Cross-References

Eminent domain, Title 70, ch. 30.

Part 45
Local Water Quality Districts

7-13-4501. Findings and purpose. (1) Pollution and degradation of surface water and ground water pose both immediate and long-term threats to the health, safety, and welfare of citizens of this state.

(2) Because of the expense and difficulty of ground water rehabilitation and cleanup and the need to protect drinking water supplies, policies and programs to prevent ground water contamination must be implemented.

(3) The purpose of this part is to provide for the creation of local water quality districts to protect, preserve, and improve the quality of surface water and ground water.

History: **En. Sec. 1, Ch. 357, L. 1991.**

7-13-4502. Definitions. As used in this part, unless the context indicates otherwise, the following definitions apply:

(1) "Board of directors" means the board of directors provided for in 7-13-4516 or a joint board of directors provided for in 7-13-4527.

(2) "Board of environmental review" means the board of environmental review as provided in 2-15-3502.

(3) "Commissioners" means the board of county commissioners or the governing body of a city-county consolidated government.

(4) "Family residential unit" means a single-family dwelling.

(5) "Fee-assessed units" means all real property with improvements, including taxable and tax-exempt property as shown on the property assessment records maintained by the county, and mobile homes as defined in 15-24-201.

(6) "Local water quality district" means an area established with definite boundaries for the purpose of protecting, preserving, and improving the quality of surface water and ground water in the district as authorized by this part.

History: **En. Sec. 2, Ch. 357, L. 1991; amd. Sec. 27, Ch. 418, L. 1995; amd. Sec. 29, Ch. 546, L. 1995.**

Compiler's Comments

1995 Amendments — Composite Section: Chapter 418 substituted definition of Board of Environmental Review for definition of Board of Health and Environmental Sciences. Amendment effective July 1, 1995.

Chapter 546 deleted definition of Board of Health and Environmental Sciences that read: ""Board of health and environmental sciences" as used in this part means the board of health and environmental sciences as provided in 2-15-2104"; and made minor changes in style. Amendment effective July 1, 1995.

Because Ch. 418 created a new Board, the Code Commissioner has codified the Board of Environmental Review.

7-13-4503 reserved.

7-13-4504. Authorization to initiate creation of a local water quality district. (1) The commissioners may initiate the creation of a local water quality district for the purpose of protecting, preserving, and improving the quality of surface water and ground water, as provided by this part, by holding a public meeting, passing a resolution of intention, providing an opportunity for owners of fee-assessed units to protest, and conducting a public hearing to hear and decide upon protests, as provided in 7-13-4506, 7-13-4507, 7-13-4509, and 7-13-4510.

(2) A city or town may be included in the district if approved by the governing body of the city or town.

History: En. Sec. 3, Ch. 357, L. 1991.

7-13-4505. Public meeting — resolution of intention to create local water quality district. (1) The commissioners shall hold at least one public meeting concerning the creation of a local water quality district prior to the passage of a resolution of intention to create the district.

(2) The resolution of intention must designate:

(a) the proposed name of the district;

(b) the necessity for the proposed district;

(c) a general description of the territory or lands included in the district, including identification of the district boundaries that must correspond to the area in which the need for the district exists pursuant to subsection (2)(b);

(d) a general description of the proposed water quality program;

(e) the initial estimated cost of the water quality program; and

(f) the initial proposed fees to be charged.

History: En. Sec. 4, Ch. 357, L. 1991.

7-13-4506. Participation of cities and towns. (1) Upon passage of a resolution of intention, the commissioners shall transmit a copy of the resolution to the governing body of any incorporated city or town within the proposed local water quality district for consideration by the governing body.

(2) If the governing body of the city or town by resolution concurs in the resolution of intention, a copy of the resolution of concurrence must be transmitted to the commissioners.

(3) If the governing body of the incorporated city or town does not concur in the resolution of intention, the commissioners may not include the city or town in the district but may continue to develop a district that excludes the city or town.

History: En. Sec. 5, Ch. 357, L. 1991.

7-13-4507. Notice of resolutions of intention and concurrence. (1) The commissioners shall give notice of the passage of the resolution of intention and resolution of concurrence, if applicable, and publish a notice that:

(a) describes the local water quality program that would be implemented in the local water quality district;

(b) specifies the initial proposed fees to be charged;

(c) designates the time and place where the commissioners will hear and decide upon protests made against the operation of the proposed district; and

(d) states that a description of the boundaries for the proposed district is included in the resolution on file in the county clerk's office.

(2) The notice must be published as provided in 7-1-2121 and must also be posted in three public places within the boundaries of the proposed district.

(3) The commissioners shall mail to all owners of proposed fee-assessed units, as listed in the property tax record maintained by the department of revenue, a postcard that identifies the location where the resolution of intention, resolution of concurrence, and protest forms may be obtained.

History: En. Sec. 6, Ch. 357, L. 1991; amd. Sec. 22, Ch. 27, Sp. L. November 1993.

7-13-4508 reserved.

7-13-4509. Right to protest — procedure. (1) At any time within 30 days after the date of the first publication of the notice provided for in 7-13-4507(1), a person owning a fee-assessed unit located within the proposed local water quality district may make written protest against the proposed district and the fees proposed to be charged.

(2) The protest must be in writing and must be delivered to the county clerk, who shall endorse on it the date the protest is received.

(3) Owners may file one protest per fee-assessed unit.

History: En. Sec. 7, Ch. 357, L. 1991.

7-13-4510. Hearing on protest. (1) At the next regular meeting of the commissioners after the expiration of the time period provided for in 7-13-4509, the commissioners shall hear and decide upon all protests.

(2) The commissioners may adjourn the hearing as necessary.

History: En. Sec. 8, Ch. 357, L. 1991.

7-13-4511. Sufficient protest to require referendum. If the owners of more than 20% of the fee-assessed units in the proposed district protest the creation of the proposed district and the fees proposed to be charged, the commissioners are barred from further proceedings on the matter unless the commissioners submit a referendum to create the district to the registered voters who reside within the proposed district and the registered voters approve the creation of the district and establish the fees by approving the referendum.

History: En. Sec. 9, Ch. 357, L. 1991.

7-13-4512. Referendum. (1) The commissioners may adopt a resolution causing a referendum to be submitted to the registered voters who reside within a proposed local water quality district to authorize the creation of the district and establish fees.

(2) The referendum must state:

(a) the type and maximum rate of the initial proposed fees that would be imposed, consistent with the requirements of 7-13-4523;

(b) the maximum dollar amount for a family residential unit;

(c) the type of activities proposed to be financed, including a general description of the local water quality program; and

(d) a general description of the areas included in the proposed district.

History: En. Sec. 10, Ch. 357, L. 1991.

7-13-4513. Insufficient protest to bar proceedings — resolution creating district — power to implement local water quality program. (1) The commissioners may create a local water quality district, establish fees, and appoint a board of directors if the commissioners find that insufficient protests have been made in accordance with 7-13-4511 or if the registered voters who reside in the proposed district have approved a referendum as provided in 7-13-4512.

(2) To create a local water quality district, the commissioners shall pass a resolution in accordance with the resolution of intention introduced and passed by the commissioners or in accordance with the terms of the referendum.

(3) The commissioners and board of directors may implement a local water quality program after the program is approved by the board of environmental review pursuant to 75-5-311.

History: En. Sec. 11, Ch. 357, L. 1991; amd. Sec. 28, Ch. 418, L. 1995.

Compiler's Comments

1995 Amendment: Chapter 418 in (3) substituted "board of environmental review" for "board of health and environmental sciences"; and made minor changes in style. Amendment effective July 1, 1995.

7-13-4514 and 7-13-4515 reserved.

7-13-4516. Board of directors. (1) Except as provided in subsections (3)(b) and (5), the commissioners shall appoint a board of directors for the local water quality district.

(2) The board of directors consists of not less than five members, including one county commissioner or member of the governing body of a city-county consolidated government, one member from the governing body of each incorporated city or town that is included in the district, one member of the county or city-county board of health, and if the district includes a substantial amount of land that is within a conservation district or districts, one conservation district supervisor.

(3) The remaining members of the board of directors are selected from interested persons, as follows:

(a) from persons whose residences or businesses are distributed equally throughout the district if a county is the only unit of local government participating in the district; or

(b) through mutual agreement by all governing bodies if a county and one or more incorporated cities and towns are participating in the district.

(4) Terms of members of the board of directors are staggered and, after the initial terms, are for 3 years.

(5) In counties that have a full-time city-county health department, the city-county board of health, created as authorized by 50-2-106, may be designated as the board of directors for the local water quality district. If the city-county board of health is designated as the board of directors and if the local water quality district includes a substantial amount of land that is within a conservation district or districts, the board of directors must also include one member who is a conservation district supervisor.

History: En. Sec. 12, Ch. 357, L. 1991.

7-13-4517. Powers and duties of board of directors. The board of directors of a local water quality district, with the approval of the commissioners, may:

(1) develop a local water quality program, to be submitted to the board of environmental review, for the protection, preservation, and improvement of the quality of surface water and ground water in the district. In developing the program, the board of directors shall consult with the board or boards of

supervisors of conservation districts, established as provided in 76-15-201, whose geographical area of jurisdiction is included within the boundaries of the local water quality district.

(2) implement a local water quality program;

(3) administer the budget of the local water quality district;

(4) employ personnel;

(5) purchase, rent, or lease equipment and material necessary to develop and implement an effective program;

(6) cooperate or contract with any corporation, association, individual, or group of individuals, including any agency of the federal, state, or local government, in order to develop and implement an effective program;

(7) receive gifts, grants, or donations for the purpose of advancing the program and acquire, by gift, deed, or purchase, land necessary to implement the local water quality program;

(8) administer local ordinances that are adopted by the commissioners and governing bodies of the participating cities and towns and that pertain to the protection, preservation, and improvement of the quality of surface water and ground water;

(9) apply for and receive from the federal government or the state government, on behalf of the local water quality district, money to aid the local water quality program;

(10) borrow money for assistance in planning or refinancing a local water quality district and repay loans with the money received from the established fees; and

(11) construct facilities that cost not more than $5,000 and maintain facilities necessary to accomplish the purposes of the district, including but not limited to facilities for removal of water-borne contaminants; water quality improvement; sanitary sewage collection, disposal, and treatment; and storm water or surface water drainage collection, disposal, and treatment.

History: En. Sec. 13, Ch. 357, L. 1991; amd. Sec. 29, Ch. 418, L. 1995.

Compiler's Comments

1995 Amendment: Chapter 418 in (1) substituted "board of environmental review" for "board of health and environmental sciences"; and made minor changes in style. Amendment effective July 1, 1995.

7-13-4518. Powers and duties of commissioners. In addition to the other powers and duties of the commissioners authorized by this part, the commissioners may:

(1) adopt local ordinances in accordance with the requirements of 75-5-311;

(2) establish fees;

(3) review and approve the annual budget of the local water quality district; and

(4) approve the construction of facilities that cost more than $5,000 but not more than $100,000 a year and that are necessary to accomplish the purposes of this part, including but not limited to facilities for removal of water-borne contaminants; water quality improvement; sanitary sewage collection, disposal, and treatment; and storm water or surface water drainage collection, disposal, and treatment.

History: En. Sec. 14, Ch. 357, L. 1991.

7-13-4519. Role of county attorney — contracts for legal services. The board of directors may, by agreement with the commissioners, contract with the county attorney or an attorney licensed to practice law in the state of Montana to perform legal services for the local water quality district.

History: En. Sec. 17, Ch. 357, L. 1991.

7-13-4520 reserved.

7-13-4521. Implementation of program. The board of directors may implement a local water quality program in parts of a local water quality district before the program is implemented in the district as a whole. If a program is initially implemented in only a portion of a district, the fees may be levied only against that part of the district where the program is being implemented. As the program is expanded throughout the district, each additional part of the district that is covered by the program shall pay the fee.

History: En. Sec. 15, Ch. 357, L. 1991.

7-13-4522. Changes in district boundaries. The board of directors may by resolution make changes in the boundaries of a local water quality district that the board determines are reasonable and proper, following the same procedures of notice and hearing provided in 7-13-4507, 7-13-4509, and 7-13-4510, except that the notice provisions of 7-13-4507(3) apply only to the owners of proposed fee-assessed units in new areas that are proposed to be included in the district. If 20% of the owners of fee-assessed units in the new areas protest the inclusion in the district and the fees proposed to be charged, the board of directors is barred from further proceedings on the matter unless the registered voters who reside in the areas proposed for inclusion agree to be included in the district and accept the proposed fees by approving a referendum in accordance with the provisions of 7-13-4512.

History: En. Sec. 16, Ch. 357, L. 1991.

7-13-4523. Fees — determination of rates — increases — exemption for agricultural water use. (1) The commissioners shall determine fee rates according to a classification system that is based upon the volume of water withdrawn and the volume and type of waste produced at each fee-assessed unit in the local water quality district.

(2) Fees for commercial and industrial units must be based on a comparison with a typical family residential unit as to volume of water withdrawn and volume and type of waste produced. Commercial and industrial units may be assessed fees that are not greater than 50 times the fees assessed on a family residential unit.

(3) The commissioners may increase fees up to 10% a year by passing a resolution to establish the new fee rate. The commissioners may not approve a proposed fee increase of more than 10% a year unless notice of the proposed increase is given as provided in 7-13-4507(1) and (2) and opportunity for protest is provided as set forth in 7-13-4509 and 7-13-4510. If more than 20% of the owners of fee assessed units in the district protest, the fee increase may not be approved except through the referendum procedure provided for in 7-13-4512.

(4) Water withdrawals for irrigation and livestock use and related water discharges may not be assessed fees.

History: En. Sec. 18, Ch. 357, L. 1991.

7-13-4524. Procedure to collect fees. The month the local water quality district is created pursuant to 7-13-4513, the department of revenue or its agents shall ensure that the amount of the fees is placed on the county tax assessments for each fee-assessed unit. Unpaid fees are a lien on the fee-assessed unit and may be enforced as a lien for nonpayment of property taxes.

History: En. Sec. 19, Ch. 357, L. 1991.

7-13-4525. Disposition and administration of proceeds. (1) All fees and other money received by a local water quality district must be placed in a separate fund maintained by the county treasurer and must be used solely for the purpose for which the local water quality district was created.

(2) The commissioners shall draw warrants upon the fund on claims approved by the board of directors.

History: En. Sec. 20, Ch. 357, L. 1991.

7-13-4526 reserved.

7-13-4527. Creation of joint local water quality districts. (1) Joint local water quality districts are districts that encompass two or more counties or parts of counties.

(2) A joint local water quality district may be created if the commissioners of each affected county:

(a) create the district, following the procedures prescribed under 7-13-4504 through 7-13-4507 and 7-13-4509 through 7-13-4513; and

(b) appoint a joint board of directors that consists of at least five members and that is consistent with the requirement of 7-13-4528(2)(b), if applicable.

History: En. Sec. 21, Ch. 357, L. 1991.

7-13-4528. Composition of board of directors of joint district — terms. (1) The board of directors for a joint district consists of one commissioner from each county involved, one member from each incorporated city or town included in the district, one member from each county or city-county board of health, and if the joint district includes a substantial amount of land that is within a conservation district or districts, one conservation district supervisor.

(2) The remaining members of the joint board of directors are selected from interested citizens, as follows:

(a) persons whose residences or businesses are distributed equally throughout the district if counties are the only units of government participating in the joint district; or

(b) through mutual agreement of all commissioners and governing bodies of cities and towns participating in the district.

(3) Terms of appointed members are staggered and, after the initial terms, are for 3 years.

History: En. Sec. 22, Ch. 357, L. 1991.

7-13-4529. Administration of funds in joint districts. Fees and other money collected by a joint local water quality district may be administered by one county treasurer upon mutual agreement by the commissioners of the counties participating in a joint local water quality district.

History: En. Sec. 23, Ch. 357, L. 1991.

7-13-4530 through 7-13-4534 reserved.

7-13-4535. Referendum to abolish local water quality district or joint local water quality district — termination procedures. (1) A person owning a fee-assessed unit located within a local water quality district or a joint local water quality district may petition the commissioners of a local water quality district or the board of directors of a joint water quality district to submit a referendum to the registered voters residing in the district to terminate or abolish the district. The petition must be in writing and contain the signatures and addresses of 20% or more of the owners of fee-assessed units in the district. The petition requesting a referendum for termination or abolishment of a district must be delivered to the county clerk who shall endorse on it the date on which the petition was received and validate the signatures within 60 days of receipt of the petition. If the petition contains valid signatures of at least 20% of the owners of fee-assessed units located within the district, the county clerk shall notify the commissioners of a local water quality district or the board of directors of a joint water quality district.

(2) Upon receipt of a valid petition described in subsection (1), the commissioners of a local water quality district or the board of directors of a joint water quality district shall submit the referendum to the registered voters residing in the district in accordance with the provisions of 7-5-136.

History: En. Sec. 1, Ch. 123, L. 1995.

Compiler's Comments

Effective Date: Section 4, Ch. 123, L. 1995, provided that this section is effective March 10, 1995.

7-13-4536. Allocation of funds upon termination of local water quality district or joint local water quality district. (1) Except as provided in subsection (2), if a local water quality district or joint local water quality district is terminated, any funds held by the county treasurer pursuant to 7-13-4525 or 7-13-4529 must be deposited in the county general fund. In the case of a terminated joint local water quality district, any funds held by the county treasurer pursuant to 7-13-4529 must be allocated between the counties on the basis of the number of fee-assessed units located in each county.

(2) If the funds held by the county treasurer pursuant to 7-13-4525 or 7-13-4529 are derived from grants or gifts that restrict the use of those funds, the county treasurer shall return those funds to the grantor or donor.

History: En. Sec. 2, Ch. 123, L. 1995.

Compiler's Comments

Effective Date: Section 4, Ch. 123, L. 1995, provided that this section is effective March 10, 1995.

CHAPTER 14

TRANSPORTATION

Part 1 — General Provisions Related to Local Government Transportation Services

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Part 48 — Air Transportation

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Part 1

General Provisions Related to Local Government Transportation Services

7-14-101. Acquisition of property for controlled-access facility. The highway authorities of the counties, incorporated cities, and towns, respectively or in cooperation with each other or the state, may acquire private or public property and property rights for controlled-access highways or controlled-access facilities and service roads. Such rights may include rights of access, air, view, and light. They may be acquired by gift, devise, purchase, or condemnation in the same manner as may now or hereafter be authorized by law for the acquisition of property or property rights in connection with highways, roads, and streets in their respective jurisdictions.

History: **En. Sec. 8-218, Ch. 197, L. 1965; R.C.M. 1947, 32-4018(part).**

Cross-References

Acquisition of right-of-way by county, 7-14-2107.

County roads — determination of damages, 7-14-2607.

Contracts between municipality and federal authorities, 7-14-4108.

Powers of highway authorities, 60-5-104.

Eminent domain, Title 70, ch. 30.

7-14-102. Allocation of state funds for public transportation. (1) (a) The department of transportation shall allocate each year one-half of the funds appropriated for the purposes of this section among the cities and urban transportation districts of the state that operate or contract for the operation of general public transportation systems.

(b) (i) A city or urban transportation district is eligible for an allocation based upon the ratio of its local financial support for public transportation to the total local financial support for all general public transportation systems in the state. Local financial support must be determined by dividing the city's or district's expenditure of local revenue for public transportation operations during the fiscal year by the mill value of the city or urban transportation district. Each applicant city and urban transportation district shall compute its expenditure of local revenue for public transportation operations for a fiscal year immediately following the end of the fiscal year and shall apply allocations received against that deficit.

(ii) A city or urban transportation district may not receive more than 50% of any year's expenditure of local revenue for public transportation operations as an allocation under this section.

(2) One-half of the funds appropriated for the purposes of this section must be paid by the department of transportation to the counties of the state in the manner provided in 15-70-101(2)(b). Money distributed to counties under this section must be used by the counties for highway or other transportation purposes.

(3) The department of transportation may adopt rules for the keeping of accounts for and otherwise implementing this section.

History: **En. 11-4513 by Sec. 1, Ch. 515, L. 1975; amd. Sec. 1, Ch. 213, L. 1975; R.C.M. 1947, 11-4513; amd. Sec. 1, Ch. 559, L. 1979; amd. Sec. 6, Ch. 274, L. 1981; amd. Sec. 1, Ch. 238, L. 1983; amd. Secs. 3, 6, Ch. 512, L. 1991; amd. Sec. 15, Ch. 10, L. 1993; amd. Sec. 7, Ch. 18, L. 1995.**

Compiler's Comments

1995 Amendment: Chapter 18 in (2), at end of first sentence, substituted reference to 15-70-101(2)(b) for reference to 15-70-101(1)(b).

Cross-References

Urban transportation districts, Title 7, ch. 14, part 2.

7-14-103. Use of county road equipment in certain municipalities. The board of county commissioners of any county may in its discretion authorize and permit the use of any county highway or road machinery or equipment, when not in use in any rural district, in connection with the construction, repair, and maintenance of streets, avenues, and alleys within any incorporated city or town of population of 4,000 or less located in such county.

History: **En. Sec. 1, Ch. 157, L. 1939; R.C.M. 1947, 16-1005.**

7-14-104. Costs of discontinuation of trafficway. Whenever a governing body discontinues, abandons, or vacates a street, alley, or road under part 26 or part 41, the costs of such process may be assessed against the petitioning property owner. Such costs may include costs of publication, engineering, and site viewing.

History: En. 11-2806 by Sec. 1, Ch. 72, L. 1977; R.C.M. 1947, 11-2806.

7-14-105 through 7-14-110 reserved.

7-14-111. Transportation for senior citizens and handicapped persons. (1) A county, urban transportation district, or municipality may, in addition to all other property tax levies authorized by law, levy up to 1 mill of property taxes to fund special transportation services for senior citizens and handicapped persons.

(2) The proceeds of the levy may be used to:

(a) contract with public or private transportation providers for services to senior citizens and handicapped individuals; or

(b) augment or subsidize provisions for the transportation of senior citizens and handicapped individuals provided by public transportation providers.

(3) If the taxing jurisdiction determines that it is not in the best interest of senior citizens and handicapped individuals to use the tax levy as provided for in subsection (2), the taxing jurisdiction may use the proceeds of the levy to establish and operate an independent transportation system for senior citizens and handicapped individuals.

(4) Counties, urban transportation districts, and municipalities are encouraged to enter into interlocal agreements to provide regional transportation services to senior citizens and handicapped persons and may create regional advisory committees to coordinate regional transportation services.

History: En. Sec. 1, Ch. 440, L. 1983; amd. Sec. 1, Ch. 375, L. 1987.

7-14-112 through 7-14-119 reserved.

7-14-120. Transloading facility. (1) The department of transportation is authorized to issue to a local government a grant for construction of a demonstration truck/train transloading facility. The department shall solicit and accept proposals for no less than 2 months following the issuance of requests for proposals and shall award the grant primarily on the basis of simple payback in energy savings. The department shall also consider impact on freight rates, job creation, geographic proximity to raw materials, and access to new markets for Montana producers and shippers.

(2) The department of environmental quality is authorized to administratively transfer funds to the department of transportation for a demonstration truck/train transloading facility as provided in subsection (1).

History: En. Sec. 5, HB 621, L. 1987; amd. Sec. 6, Ch. 512, L. 1991; amd. Sec. 30, Ch. 418, L. 1995.

Compiler's Comments

1995 Amendment: Chapter 418 in (2) substituted "department of environmental quality" for "department of natural resources and conservation". Amendment effective July 1, 1995.

Part 2
Urban Transportation Districts

Part Cross-References

Municipal bus services, Title 7, ch. 14, part 44.

7-14-201. Purpose. This part authorizes the establishment of urban transportation districts to supply transportation services and facilities to district residents and other persons.

History: En. 11-4501 by Sec. 1, Ch. 355, L. 1975; R.C.M. 1947, 11-4501.

7-14-202. Definitions. As used in this part, the following definitions apply:

(1) "Board" means the board of transportation of any district created under this part.

(2) "Commissioners" means the board of county commissioners or other governing body of a county.

(3) "District" means any transportation district created under this part.

History: En. 11-4502 by Sec. 2, Ch. 355, L. 1975; R.C.M. 1947, 11-4502.

7-14-203. Petition to create urban transportation district. Proceedings for creation of a transportation district may be initiated by a petition signed by not less than 20% of the registered electors who reside within the proposed district.

History: En. 11-4503 by Sec. 3, Ch. 355, L. 1975; R.C.M. 1947, 11-4503(part); amd. Sec. 338, Ch. 571, L. 1979.

7-14-204. Details relating to petition. The petition shall include a map showing the limits of the proposed district and shall be in the form provided in Title 13, chapter 27.

History: En. 11-4503 by Sec. 3, Ch. 355, L. 1975; R.C.M. 1947, 11-4503(part); amd. Sec. 339, Ch. 571, L. 1979.

7-14-205. Petition to be filed with election administrator — certificate. (1) The complete petition shall be filed with the election administrator.

(2) The election administrator shall, within 30 days thereafter, carefully examine the petition and attach to it a certificate under his official signature and the seal of his office. The certificate shall set forth:

(a) the total number of individuals who are registered electors within the proposed transportation district; and

(b) which and how many of the individuals whose names are on the petitions are qualified to sign the petition.

History: En. 11-4503 by Sec. 3, Ch. 355, L. 1975; R.C.M. 1947, 11-4503(part); amd. Sec. 340, Ch. 571, L. 1979.

7-14-206. Effect of insufficient number of signatures. If the petition is found to contain less than 20% of the signatures of the registered electors of the transportation district, the petition shall be declared void.

History: En. 11-4503 by Sec. 3, Ch. 355, L. 1975; R.C.M. 1947, 11-4503(part); amd. Sec. 341, Ch. 571, L. 1979.

7-14-207. Presentation of petition to board of county commissioners — hearing required. (1) Provided the petition contains the signatures of

20% of the qualified electors of the proposed transportation district, the county clerk shall present the petition and his certificate to the commissioners at their first meeting held after he has attached his certificate.

(2) The commissioners shall thereupon examine the petition and shall by resolution call for a public hearing on the creation of such district.

History: En. 11-4503 by Sec. 3, Ch. 355, L. 1975; R.C.M. 1947, 11-4503(2), (3).

7-14-208. Notice of hearing. (1) A notice of the public hearing shall be published in a newspaper having general circulation within the proposed transportation district once each week for at least 2 weeks, the last publication to be at least 2 weeks prior to the hearing. If there is no newspaper having general circulation within the proposed district, the notice of public hearing shall be posted in at least three public places within the proposed district for 2 weeks prior to the hearing.

(2) The notice shall state the time, date, place, and purpose of the hearing and describe the boundaries of the proposed district.

History: En. 11-4504 by Sec. 4, Ch. 355, L. 1975; R.C.M. 1947, 11-4504(2).

7-14-209. Hearing on petition. (1) At the time fixed for the public hearing, the commissioners shall hear all testimony offered in support of and in opposition to any petition and the creation of the district.

(2) The hearings may be adjourned from time to time for the determination of additional information or hearing petitioners or objectors, but no adjournment may exceed 2 weeks after the date originally noticed and published for the hearing.

History: En. 11-4504 by Sec. 4, Ch. 355, L. 1975; R.C.M. 1947, 11-4504(1).

7-14-210. Election on question of creating urban transportation district. (1) The commissioners, upon completion of the public hearing, shall proceed by resolution to refer the creation of the district to the persons qualified to vote on the proposition.

(2) The commissioners may designate in their resolution whether a special election is to be held in conjunction with a regular or primary election or whether the matter is to be determined at the next general election. If a special election is ordered, the order must specify the date for the election and the voting places and the commissioners shall appoint and designate election judges and clerks.

History: En. 11-4505 by Sec. 5, Ch. 355, L. 1975; R.C.M. 1947, 11-4505(part); amd. Sec. 47, Ch. 387, L. 1995.

Compiler's Comments

1995 Amendment: Chapter 387 in (2), in first sentence after "held", inserted "in conjunction with a regular or primary election"; and made minor changes in style.

7-14-211. Conduct of election on question of creating district. (1) The election shall be held in all respects, as nearly as practicable, in conformity with the general election laws.

(2) At the election, the ballots shall contain the words:

☐ Transportation district — YES

☐ Transportation district — NO

History: En. 11-4505 by Sec. 5, Ch. 355, L. 1975; R.C.M. 1947, 11-4505(part); amd. Sec. 342, Ch. 571, L. 1979.

7-14-212. District to be governed by transportation board. (1) The district must be governed by a transportation board. The commissioners and the governing bodies of each city or town included or partially included in the district shall determine if the board is to be elected or appointed.

(2) The commissioners and the governing body by resolution shall:

(a) determine the number of board members;

(b) set the term of office;

(c) determine the makeup of the board with respect to the number of appointed members that will represent each county, city, or town;

(d) establish a procedure for selecting the initial members of an elected board. The initial members shall serve until the first county general election after their appointment.

(e) determine the number of candidates for an elected board whose names must be placed on the ballot in the county general election, based on the results of the primary election; and

(f) establish a procedure for filling vacancies on the board, including a provision for public notice.

(3) The commissioners and the governing body may, at any time, adopt a resolution changing the method by which the members of the board are selected. The resolution must contain a provision that the term of office of the current members of the board may not be shortened.

History: En. 11-4506 by Sec. 6, Ch. 355, L. 1975; R.C.M. 1947, 11-4506(part); amd. Sec. 1, Ch. 608, L. 1993.

7-14-213. Repealed. Sec. 3, Ch. 608, L. 1993.

History: En. 11-4506 by Sec. 6, Ch. 355, L. 1975; R.C.M. 1947, 11-4506(part).

7-14-214. Election of members of transportation board. Any registered elector in the district may file a petition of candidacy with the election administrator of the county where the district is located. A filing fee may not be required. All candidates shall file a nonpartisan petition for candidacy containing the signatures of not less than 25 registered electors of the district. Except for the number of petition signers required, the petition shall be filed as provided in 13-14-113.

History: En. 11-4506 by Sec. 6, Ch. 355, L. 1975; R.C.M. 1947, 11-4506(part); amd. Sec. 343, Ch. 571, L. 1979; amd. Sec. 1, Ch. 117, L. 1981; amd. Sec. 2, Ch. 608, L. 1993.

7-14-215. Repealed. Sec. 3, Ch. 608, L. 1993.

History: En. 11-4506 by Sec. 6, Ch. 355, L. 1975; R.C.M. 1947, 11-4506(part).

7-14-216. Repealed. Sec. 3, Ch. 608, L. 1993.

History: En. 11-4506 by Sec. 6, Ch. 355, L. 1975; R.C.M. 1947, 11-4506(part); amd. Sec. 1, Ch. 601, L. 1981.

7-14-217. Repealed. Sec. 3, Ch. 608, L. 1993.

History: En. 11-4506 by Sec. 6, Ch. 355, L. 1975; R.C.M. 1947, 11-4506(part); amd. Sec. 2, Ch. 601, L. 1981.

7-14-218. Compensation of transportation board members. The board members shall serve without pay except for necessary transportation expenses.

History: En. 11-4506 by Sec. 6, Ch. 355, L. 1975; R.C.M. 1947, 11-4506(part).

7-14-219. Powers of transportation board. The board shall have all powers necessary and proper to the establishment, operation, improvement, maintenance, and administration of the transportation district.

History: En. 11-4507 by Sec. 7, Ch. 355, L. 1975; R.C.M. 1947, 11-4507(part).

Cross-References

Municipal bus services, Title 7, ch. 14, part 44.

7-14-220. Employment of administrative officer. The board shall employ a qualified administrative officer for the district. The board shall give public notice of its solicitation of applications for a qualified administrative officer.

History: En. 11-4507 by Sec. 7, Ch. 355, L. 1975; R.C.M. 1947, 11-4507(2).

7-14-221. Area of service. The district shall primarily serve the residents within the district boundaries but may authorize service outside the district boundaries where deemed appropriate.

History: En. 11-4507 by Sec. 7, Ch. 355, L. 1975; R.C.M. 1947, 11-4507(part).

7-14-222 through 7-14-230 reserved.

7-14-231. Transportation district budget. The board shall annually present its budget to the commissioners at the regular budget meetings as prescribed by law and therewith certify the amount of money necessary and proper for the ensuing year.

History: En. 11-4508 by Sec. 8, Ch. 355, L. 1975; R.C.M. 1947, 11-4508(part).

7-14-232. Mill levy authorized — limitation. (1) The commissioners shall annually, at the time of levying county taxes, fix and levy a tax in mills upon all property within said transportation district clearly sufficient to raise the amount certified by the board.

(2) The tax so levied for all district purposes other than payment of bonded indebtedness shall not in any year exceed 12 mills on each dollar of taxable valuation of property within said district.

History: En. 11-4508 by Sec. 8, Ch. 355, L. 1975; R.C.M. 1947, 11-4508(part).

7-14-233. Collection of tax — role of county treasurer. (1) The procedure for the collection of the tax shall be in accordance with the existing laws of the state of Montana.

(2) The funds collected under the tax levy shall be held by the county treasurer.

(3) The county treasurer shall be, ex officio, the treasurer for the transportation district and shall keep a detailed account of:

(a) all tax money paid into the fund;

(b) all other money from any source received by the district; and

(c) all payments and disbursements from the fund.

History: En. 11-4509 by Sec. 9, Ch. 355, L. 1975; R.C.M. 1947, 11-4509(part).

7-14-234. Warrants to be used for payments. Funds shall be paid out on warrants issued by direction of the board and signed by a majority of its membership.

History: En. 11-4509 by Sec. 9, Ch. 355, L. 1975; R.C.M. 1947, 11-4509(part).

7-14-235. Transportation district bonds authorized. A transportation district may borrow money by the issuance of general obligation or revenue bonds or a combination thereof to provide funds for the district.

History: **En. 11-4510 by Sec. 10, Ch. 355, L. 1975; R.C.M. 1947, 11-4510(part).**

7-14-236. Limitation on bonded indebtedness. The amount of bonds issued to provide funds for the district and outstanding at any time shall not exceed 28% of the taxable value of taxable property therein as ascertained by the last assessment for state and county taxes previous to the issuance of such bonds.

History: **En. 11-4510 by Sec. 10, Ch. 355, L. 1975; R.C.M. 1947, 11-4510(part); amd. Sec. 50, Ch. 614, L. 1981.**

7-14-237 through 7-14-240 reserved.

7-14-241. Procedure to enlarge district or be included in district. (1) The boundaries of any transportation district may be enlarged if 51% of the qualified electors of the area to be added to the existing district sign a petition requesting addition to the district.

(2) A real property owner may petition to have that owner's property included in a district.

(3) Each addition must be approved by a majority vote of the transportation board.

(4) The area added to a district pursuant to subsection (1) may be removed if the area does not directly receive transportation services from the district and 51% of the qualified voters in the area sign a petition requesting to be removed from the district. The removal of the area is effective 60 days after submission of the petition to the transportation board unless within that time, it is determined that the petition contains insufficient signatures for removal of the area. An insufficient petition must be returned to the petitioners, who may resubmit a corrected version within 90 days.

(5) (a) All property within any addition to the district is subject to all existing indebtedness of the district.

(b) Property within an area removed from the district is not subject to the district's existing indebtedness if the area was added to the district within 5 years of the date on which the petition for removal was submitted to the transportation board.

History: **En. 11-4511 by Sec. 11, Ch. 355, L. 1975; R.C.M. 1947, 11-4511; amd. Sec. 1, Ch. 374, L. 1987; amd. Sec. 1, Ch. 245, L. 1995.**

Compiler's Comments

1995 Amendment: Chapter 245 inserted (2) allowing an owner to petition for inclusion in district; in (4), at end of second sentence, substituted "the area" for "territory" and in third sentence substituted "resubmit a corrected version" for "submit it again"; and made minor changes in style.

7-14-242. Petition for dissolution of district. Any transportation district may be dissolved upon presentation to the county commissioners of a petition signed by at least 51% of the qualified voters of such district.

History: **En. 11-4512 by Sec. 12, Ch. 355, L. 1975; R.C.M. 1947, 11-4512(part).**

7-14-243. Examination of petition — hearing. (1) Upon the filing of such petition, the commissioners shall carefully examine the petition.

(2) (a) If it is found that the petition is in proper form and bears the requisite number of signatures of qualified petitioners, the commissioners shall

by resolution call for a public hearing on the dissolution of such transportation district.

(b) If such petition is found by the commissioners to be lacking in the number of signatures, the commissioners shall declare the petition void.

History: En. 11-4512 by Sec. 12, Ch. 355, L. 1975; R.C.M. 1947, 11-4512(part).

7-14-244. Notice of hearing on question of dissolution of district. (1) A notice of the hearing required by 7-14-243(2)(a) shall be published in a newspaper having general circulation in the transportation district once each week for at least 2 weeks, the last publication to be at least 2 weeks before the hearing. If there is no newspaper having general circulation in the district, the notice of the hearing shall be posted in at least three public places in the district for 2 weeks before the hearing.

(2) The notice shall state the time, date, place, and purpose of the hearing.

History: En. 11-4512 by Sec. 12, Ch. 355, L. 1975; R.C.M. 1947, 11-4512(2).

7-14-245. Hearing on question of dissolution of district — decision. (1) If upon such hearing the commissioners find that the district is not indebted beyond funds immediately available to extinguish all of its debts and obligations and that there is good reason for the dissolution of such district, the commissioners shall enter upon their minutes an order dissolving such district.

(2) Such order shall be filed of record, and the dissolution shall be effective for all purposes 6 months after the date of filing the order of dissolution, provided that at or before such time, the board of said district certifies to the county commissioners that all debts and obligations of the district have been paid, discharged, or irrevocably settled, together with proof thereof.

History: En. 11-4512 by Sec. 12, Ch. 355, L. 1975; R.C.M. 1947, 11-4512(part).

7-14-246. Distribution of district assets after dissolution. Any assets of the district remaining after all debts and obligations of the district have been paid, discharged, or irrevocably settled shall be evenly divided between the county and any cities within or partially within the dissolved district.

History: En. 11-4512 by Sec. 12, Ch. 355, L. 1975; R.C.M. 1947, 11-4512(part).

Part 3

Local Option Motor Fuel Excise Tax

7-14-301. Local option motor fuel excise tax authorized. (1) A motor fuel excise tax may be imposed within a county:

(a) by the people of the county by initiative; or

(b) by the board of county commissioners by adoption of a resolution and referral to the people.

(2) The motor fuel excise tax must be imposed in increments of 1 cent per gallon and may not exceed 2 cents per gallon. The tax must be imposed upon gasoline sold to the ultimate consumer within the county for use in motor vehicles operated upon public highways, streets, and roads.

(3) The initiative or referendum must specify that the tax is to be collected by the department of transportation.

(4) The motor fuel excise tax may not be assessed sooner than 90 days from the date of passage of the initiative or referendum.

(5) Each distributor shall render a monthly statement to the department of transportation of all gasoline distributed during the preceding calendar month in the county in which it is sold to the ultimate consumer and other information that the department requires in order to administer the motor fuel excise tax.

(6) The information, recordkeeping, and examination of records provisions of Title 15, chapter 70, apply to this part.

(7) The department of transportation shall establish procedures to provide a refund to a person who has paid the tax but who can substantiate that the motor fuel was purchased for a use other than on public highways, streets, and roads.

(8) In this part, the terms "distributor", "gasoline", "motor vehicle", "person", and "use" have the meanings ascribed to them in 15-70-201.

History: En. Sec. 1, Ch. 621, L. 1979; amd. Sec. 1, Ch. 572, L. 1981; amd. Sec. 1, Ch. 381, L. 1983; amd. Sec. 8, Ch. 18, L. 1995.

Compiler's Comments

1995 Amendment: Chapter 18 in introductory clause of (1), after "tax", deleted "in increments of 1 cent per gallon, not to exceed 2 cents per gallon upon gasoline sold to the ultimate consumer within the county for use in motor vehicles operated upon public highways, streets, and roads" and after "imposed" inserted "within a county"; inserted (2) regarding imposition of the motor fuel excise tax; at beginning of (5) deleted "Every distributor shall pay the motor fuel excise tax to the agency specified in the initiative or referendum as provided in subsection (1). When the tax is collected by the department of transportation" and near beginning, after "department", inserted "of transportation"; in (7), after "transportation", deleted "collecting the tax authorized under subsection (1)"; in (8), after ""gasoline"", deleted ""import""; and made minor changes in style.

Cross-References

Initiative procedure, 7-5-132 through 7-5-137.

7-14-302. Use of local motor fuel excise tax revenue. (1) A county or municipality receiving revenue from the tax authorized by 7-14-301 shall use the revenue derived only for the construction, reconstruction, maintenance, and repair of public streets and roads.

(2) A county shall contract with the department for reimbursement of the actual costs of collection. One percent of the motor fuel excise tax revenue collected in a county is to be reimbursed to the distributor for the cost of compliance with this part.

History: En. Sec. 2, Ch. 621, L. 1979; amd. Sec. 2, Ch. 572, L. 1981.

Cross-References

Financial management of county roads, Title 7, ch. 14, part 25.

7-14-303. Allocation of revenue and disposition of funds from county-imposed motor fuel excise tax. (1) Revenue derived from a motor fuel excise tax imposed by a county under 7-14-301 must be apportioned among the county and municipalities in the county:

(a) in the proportion of motor vehicles registered in the county outside of the municipalities to those registered within the municipalities during the preceding year; or

(b) as determined by an interlocal agreement.

(2) All taxes, interest, and penalties collected by the department of transportation under this part shall be promptly transmitted to the state treasurer who shall deposit such funds in the state special revenue fund to the credit of

the department of transportation account. Such funds shall be paid quarterly by the state treasurer directly to the county in which the tax was imposed.

History: **En. Sec. 3, Ch. 621, L. 1979; amd. Sec. 3, Ch. 572, L. 1981; amd. Sec. 1, Ch. 277, L. 1983; amd. Sec. 3, Ch. 512, L. 1991.**

7-14-304. Lien for delinquent tax — interest and penalty — statute of limitations. (1) The lien provisions of 15-70-211 apply to all delinquent motor fuel excise taxes, penalties, and interest due from a distributor under this part. Such a lien has the same force and effect as a lien for delinquent gasoline license tax imposed under Title 15, chapter 70, part 2.

(2) Penalties and interest for any delinquent motor fuel excise tax are the same as provided for the gasoline license tax under Title 15, chapter 70, part 2.

(3) Any action to recover a delinquent motor fuel excise tax must be initiated within 3 years from the due date of the return or the date of filing the return, whichever period expires later. Upon discovery of fraud, an action must be initiated within 3 years of the discovery.

History: **En. Sec. 4, Ch. 621, L. 1979; amd. Sec. 4, Ch. 572, L. 1981.**

Cross-References

Liens, Title 71, ch. 3, part 1.

Parts 4 through 10 reserved

Part 11
Port Authorities

Part Cross-References

Tax exemption for industrial park owned by port authority, 15-24-1902.

Airport authorities, Title 67, ch. 11.

7-14-1101. Local port authority. (1) Any county or municipality may, by resolution of its governing body, create a public body, corporate and politic, to be known as a local port authority, authorized to exercise its functions upon the appointment and qualification of the first commissioners thereof. Such a governing body may by resolution determine to exercise any or all powers granted to such authorities in this part, unless such powers have been conferred upon a local or regional port authority.

(2) Upon the adoption of a resolution creating a local port authority, the governing body of the county or municipality shall, pursuant to the resolution, appoint or, at the option of the governing body, elect, as provided in 7-14-1106, not less than five persons as commissioners of the authority. The commissioners who are first appointed must be designated to serve for terms of 1, 2, 3, 4, and 5 years, respectively, but thereafter each commissioner must be appointed or elected for a term of 5 years, except that vacancies occurring other than by expiration of a term must be filled for the unexpired term by the governing body.

History: **En. Sec. 1, Ch. 456, L. 1985; amd. Sec. 1, Ch. 640, L. 1991.**

7-14-1102. Regional port authority. (1) Two or more local governments may by joint resolution create a public body, corporate and politic, to be known as a regional port authority. The resolution creating a regional port authority must create a board of not less than five commissioners. The number to be appointed, their term, and their compensation, if any, must be provided for in the resolution. Each such regional port authority shall organize, select officers for terms to be fixed by agreement, and adopt and amend from time to time rules for its own procedure.

(2) A regional port authority may be increased from time to time to serve one or more additional counties or municipalities if each additional local government, each of the local governments then included in the regional authority, and the commissioners of the regional authority, respectively, adopt a joint resolution consenting thereto. However, if a local port authority for any local government seeking to be included in the regional authority is then in existence, the commissioners of the local authority must consent to the inclusion of the county or municipality in the regional authority; upon the inclusion of such local government in the regional authority, all rights, contracts, obligations, and real and personal property of the local authority must be in the name of and vest in the regional authority.

(3) A regional port authority may be decreased if each of the local governments then included in the regional authority and the commissioners of the regional authority consent to the decrease and make provisions for the retention or disposition of its assets and liabilities.

(4) A county or municipality may not adopt any resolution authorized by this section without a public hearing thereon. Notice must be given at least 10 days prior to the hearing in a newspaper published in the county or municipality or, if there is no newspaper published therein, in a newspaper having general circulation in the county or municipality.

(5) For the purpose of this part, a regional port authority has the same powers as all other political subdivisions in the adoption and enforcement of comprehensive port zoning regulations, as provided by the laws of this state.

History: En. Sec. 2, Ch. 456, L. 1985.

7-14-1103. Commissioners. (1) The powers of each authority are vested in the commissioners thereof. A majority of the commissioners of an authority constitutes a quorum for the purpose of conducting business of the authority and exercising its powers for all other purposes. Action may be taken by the authority upon a vote of not less than a majority of the commissioners present.

(2) There must be elected a chairman and vice-chairman from among the commissioners. An authority may employ an executive director, secretary, technical experts, and such other officers, agents, and employees, permanent and temporary, as it may require and shall determine their qualifications, duties, and compensation. An authority may delegate to one or more of its agents or employees such powers or duties as it considers proper.

(3) A commissioner of an authority is entitled to receive expenses, as provided in 2-18-501 through 2-18-503, incurred in the discharge of his duties. Each commissioner shall hold office until his successor has been appointed or elected and has qualified. The certificates of the appointment, reappointment, or election of commissioners must be filed with the authority.

History: En. Sec. 3, Ch. 456, L. 1985; amd. Sec. 3, Ch. 640, L. 1991.

7-14-1104. Purpose — public and governmental functions. (1) The purposes of a port authority are to:

(a) promote, stimulate, develop, and advance the general welfare, commerce, economic development, and prosperity of its jurisdiction and of the state and its citizens;

(b) endeavor to increase the volume of commerce within the jurisdiction of the port authority and the state through planning, advertising, acquisition, establishment, development, construction, improvement, maintenance, equipment, operation, regulation, and protection of transportation, storage, or other facilities that promote the safe, efficient, and economical handling of commerce;

(c) cooperate and act in conjunction with other organizations, public or private, in the development of commerce, industry, manufacturing, services, natural resources, agriculture, livestock, recreation, tourism, health care, and other economic activity in the state;

(d) support the creation, expansion, modernization, retention, and relocation of new and existing businesses and industry in the state and otherwise stimulate, assist in, and support the growth of all kinds of economic activity that will tend to promote commerce and business development, maintain the economic stability and prosperity of its jurisdiction and of the state, and thus provide maximum opportunities for employment and improvement in the standard of living of citizens of the state.

(2) The acquisition of any land or interest in land pursuant to this part, the planning, acquisition, establishment, development, construction, improvement, maintenance, equipment, operation, regulation, and protection of port authority facilities, and the exercise of any powers granted to port authorities and other public agencies to be severally or jointly exercised are public and governmental functions, exercised for a public purpose, and matters of public necessity. All land and other property and privileges acquired and used by or on behalf of any authority or other public agency, as provided in this part, must be used for public and governmental purposes and as a matter of public necessity. A port authority may pledge, lease, sell, or mortgage all or any part of its facilities to secure bonds under this part as provided in 7-14-1133.

History: En. Sec. 4, Ch. 456, L. 1985; amd. Sec. 1, Ch. 507, L. 1989; amd. Sec. 4, Ch. 640, L. 1991; amd. Sec. 1, Ch. 22, L. 1995.

Compiler's Comments

1995 Amendment: Chapter 22 in (2) inserted last sentence allowing a port authority to pledge, lease, sell, or mortgage its facilities to secure bonds. Amendment effective February 2, 1995.

7-14-1105. Cooperation of county or municipality. For the purpose of aiding and cooperating in the planning, undertaking, construction, or operation of ports and facilities pursuant to this part, any county or municipality for which an authority has been created upon such terms, with or without consideration, as it may determine may:

(1) lend or donate money to the authority;

(2) provide that all or a portion of the taxes or funds available or to become available to or required by law to be used by the county or municipality for port purposes be transferred or paid directly to the port authority as such funds become available to the county or municipality;

(3) cause water, sewer, or drainage facilities or any other facilities that it is empowered to provide to be furnished adjacent to or in connection with such ports or facilities;

(4) dedicate, sell, convey, or lease any of its interest in any property or grant easements, licenses, or any other rights or privileges therein to the authority;

(5) furnish, dedicate, close, pave, install, grade, regrade, plan or replan streets, roads, roadways, and walks from established streets or roads to such port or facilities;

(6) do any and all things, whether or not specifically authorized in this section and not otherwise prohibited by law, that are necessary or convenient to aid and cooperate with the authority in the planning, undertaking, construction, or operation of ports and facilities; and

(7) enter into agreements with the authority respecting action to be taken by the county or municipality pursuant to the provisions of this section.

History: En. Sec. 5, Ch. 456, L. 1985.

7-14-1106. Election of local port authority commissioners. (1) Any registered elector in the county or municipality in which the local port authority is located may file a petition of candidacy with the election administrator. The petition must contain the signatures of not less than 25 registered electors of the county or municipality. The petition must be filed at least 75 days before the election day.

(2) The election must be conducted at the time provided in 13-1-104(3) and in the manner provided by 13-1-401.

(3) If no nomination petitions are filed for one or more commissioner offices, the appropriate local governing body shall appoint one or more commissioners as necessary to fill those offices.

History: En. Sec. 2, Ch. 640, L. 1991.

Cross-References

Times for holding general elections, 13-1-104.

Manner of conducting general elections for political subdivisions required to hold annual elections, 13-1-401.

7-14-1107 through 7-14-1110 reserved.

7-14-1111. General powers of authority. An authority has all the powers necessary or convenient to carry out the purposes of this part, including but not limited to the power to:

(1) request annually the amount of tax to be levied by the governing body for port purposes, which request the governing body may in its discretion approve for port purposes;

(2) sue and be sued, have a seal, and have perpetual succession;

(3) execute such contracts and other instruments and take such other action as may be necessary or convenient to carry out the purposes of this part;

(4) plan, establish, acquire, develop, construct, purchase, enlarge, improve, maintain, equip, operate, regulate, and protect transportation, storage, or other facilities. For such purposes an authority may, by purchase, gift, devise, lease, or otherwise, acquire real or personal property or any interest therein, including easements.

(5) establish comprehensive port zoning regulations in accordance with the laws of this state;

(6) acquire, by purchase, gift, devise, lease, or otherwise, existing transportation, storage, or other facilities as may be necessary or convenient to carry

out the purposes of this part. However, an authority may not acquire or take over any transportation, storage, or other facility owned or controlled by another authority, county, municipality, or public agency without the consent of such authority, county, municipality, or public agency.

(7) provide financial and other support to organizations in its jurisdiction, including corporations organized under the provisions of the development corporation act in Title 32, chapter 4, whose purpose is to promote, stimulate, develop, and advance the general welfare, economic development, and prosperity of its jurisdiction and of the state and its citizens by stimulating, assisting in, and supporting the growth of all kinds of economic activity, including the creation, expansion, modernization, retention, and relocation of new and existing businesses and industry in the state, all of which will tend to promote business development, maintain the economic stability and prosperity of the state, and thus provide maximum opportunities for employment and improvement in the standards of living of citizens of the state.

History: En. Sec. 6, Ch. 456, L. 1985; amd. Sec. 2, Ch. 507, L. 1989; amd. Sec. 5, Ch. 640, L. 1991.

Cross-References

Procurement of architectural, engineering, and land surveying services by governmental entities, Title 18, ch. 8, part 2.

7-14-1112. Rules. An authority may adopt, amend, and repeal such reasonable resolutions, rules, and orders as it considers necessary for its own administration, management, and governance as well as for the management, governance, and use of any transportation, storage, or other facility owned by it or under its control. No rule, order, or standard prescribed by the commission may be inconsistent with or contrary to any act of the congress of the United States or any regulation promulgated or standard established pursuant thereto. The authority shall keep on file at the principal office of the authority a copy of all its rules for public inspection.

History: En. Sec. 7, Ch. 456, L. 1985; amd. Sec. 3, Ch. 507, L. 1989; amd. Sec. 6, Ch. 640, L. 1991.

Cross-References

Montana Administrative Procedure Act not applicable to local governments, 2-4-102.

7-14-1113 through 7-14-1120 reserved.

7-14-1121. Supplementary powers. In addition to the general and special powers conferred by this part, each authority may exercise all powers incidental to the exercise of such general and special powers.

History: En. Sec. 8, Ch. 456, L. 1985.

7-14-1122 through 7-14-1124 reserved.

7-14-1125. Granting of operation and use privileges. (1) In connection with the operation of a transportation, storage, or other facility owned or controlled by an authority, the authority may enter into contracts, leases, and other arrangements for terms not to exceed 30 years with any persons:

(a) granting the privilege of using or improving the port authority facility or any portion or facility thereof or space therein for commercial purposes;

(b) conferring the privilege of supplying goods, commodities, services, or facilities at the port authority facility; and

(c) making available services to be furnished by the authority or its agents at the transportation, storage, or other facility.

(2) In each case the authority may establish the terms and conditions and fix the charges, rentals, or fees for the privileges or services, which must be reasonable and uniform for the same class of privilege or service and must be established with due regard to the property and improvements used and the expenses of operation to the authority.

History: En. Sec. 9, Ch. 456, L. 1985; amd. Sec. 7, Ch. 640, L. 1991.

7-14-1126. Port property — disposal. Except as may be limited by the terms and conditions of any grant, loan, or agreement authorized by 7-14-1136, an authority may sell, lease, or otherwise dispose of any transportation, storage, or other facility or other property or portion of or interest in the facility or property acquired pursuant to this part. The disposal by sale, lease, or otherwise must be in accordance with the laws of this state governing the disposition of other public property, unless a sale, lease, mortgage, or other disposition is made under 7-14-1133 to secure bonds of the authority.

History: En. Sec. 10, Ch. 456, L. 1985; amd. Sec. 8, Ch. 640, L. 1991; amd. Sec. 2, Ch. 22, L. 1995.

Compiler's Comments

1995 Amendment: Chapter 22 near end of second sentence, after "public property", inserted "unless a sale, lease, mortgage, or other disposition is made under 7-14-1133 to secure bonds of the authority"; and made minor changes in style. Amendment effective February 2, 1995.

7-14-1127 through 7-14-1130 reserved.

7-14-1131. Municipal tax levy. The port authority may request annually from the governing bodies the amount of tax to be levied by each municipality participating in the creation of the port authority, and the municipality may levy the amount requested, pursuant to provisions of law authorizing cities and other political subdivisions of this state to levy taxes. The levy made may not exceed the maximum levy permitted by 67-10-402 for port purposes or any lower limit that may have been established by the municipality or municipalities in the resolution creating the authority. The municipality shall collect the taxes requested by a port authority that it has authorized in the same manner as other taxes are levied and collected and make payment to the port authority. The proceeds of such taxes when and as paid to the port authority must be deposited in a special account or accounts in which other revenues of the authority are deposited and may be expended by the authority as provided for in this part. Prior to the issuance of bonds under 7-14-1133 and 7-14-1134, the port authority or the municipality may by resolution covenant and agree that the total amount of such taxes then authorized by law, or such portion thereof as may be specified by the resolution, will be requested, levied, and deposited annually as provided in this section until the bonds and interest thereon are fully paid.

History: En. Sec. 11, Ch. 456, L. 1985; amd. Sec. 9, Ch. 640, L. 1991.

7-14-1132. County tax levy. In counties supporting ports of port authorities, a levy authorized in 67-10-402 may be made for such purposes.

History: En. Sec. 12, Ch. 456, L. 1985.

7-14-1133. Bonds and obligations. (1) Except for providing financial support to a private development organization, including a corporation organized under Title 32, chapter 4, whose purpose is to advance the economic development of its jurisdiction and of the state and its citizens, an authority may borrow money for any of its corporate purposes and issue bonds, including refunding bonds, for any of its corporate purposes. The bonds may be in the form and upon terms as it determines, payable out of any revenue of the authority, including revenue derived from:

(a) any port or transportation and storage facility;
(b) taxes levied pursuant to 7-14-1131 or 67-10-402;
(c) grants or contributions from the federal government; or
(d) other sources.

(2) The bonds may be issued by resolution of the authority, without an election and without any limitation of amount, except that bonds may not be issued at any time if the total amount of principal and interest to become due in any year on the bonds and on any then outstanding bonds for which revenue from the same source is pledged exceeds the amount of revenue to be received in that year, as estimated in the resolution authorizing the issuance of the bonds. The authority shall take all action necessary and possible to impose, maintain, and collect rates, charges, and rentals and to request taxes, if any are pledged, sufficient to make the revenue from the pledged source in such year at least equal to the amount of principal and interest due in that year.

(3) The bonds may be sold at public or private sale and may bear interest as provided in 17-5-102. Except as otherwise provided in this part, any bonds issued pursuant to this part by an authority may be payable as to principal and interest solely from revenue of the authority or from particular port, transportation, storage, or other facilities of the authority. The bonds must state on their face the applicable limitations or restrictions regarding the source from which principal and interest are payable.

(4) Bonds issued by an authority, county, or municipality pursuant to the provisions of this part are declared to be issued for an essential public and governmental purpose by a political subdivision within the meaning of 15-30-111(2)(a).

(5) (a) For the security of bonds, the authority, county, or municipality may by resolution make and enter into any covenant, agreement, or indenture and may exercise any additional powers authorized to be exercised by a municipality under Title 7, chapter 7, parts 44 and 45. The sums required from time to time to pay principal and interest and to create and maintain a reserve for the bonds may be paid from any revenue referred to in this part, prior to the payment of current costs of operation and maintenance of the facilities.

(b) As further security for the bonds, the authority, with the approval of the governing body of the county or municipality that created the authority, may pledge, lease, sell, mortgage, or grant a security interest in all or any portion of its port, transportation, storage, or other facilities, whether or not the facilities are financed by the bonds. The instrument effecting the pledge, lease, sale, mortgage, or security interest may contain any agreements and provisions customarily contained in instruments securing bonds, as the commissioners of the authority consider advisable. The provisions must be consistent with this part and are subject to and must be in accordance with the laws of this state governing mortgages, trust indentures, security agreements, or instruments. The instrument may provide that in the event of a default in the payment of principal or interest on the bonds or in the performance of any agreement contained in the proceedings authorizing the bonds or instrument, the payment or performance may be enforced by mandamus or by the appointment of a receiver in equity. The receiver may collect charges, rental, or fees and may apply the revenue from the mortgaged property or collateral in accordance with the proceedings or the provisions of the instrument.

(6) Nothing in this section or 7-14-1134 may be construed to limit the use of port authority revenue, including federal and state money as described in 7-14-1136, to make grants and loans or to otherwise provide financial and other support to private development organizations, including corporations organized under the provisions of the development corporation act in Title 32, chapter 4. The credit of the state, county, or municipal governments or their agencies or authorities may not be pledged to provide financial support to the development organizations.

History: En. Sec. 13, Ch. 456, L. 1985; amd. Sec. 22, Ch. 370, L. 1987; amd. Sec. 4, Ch. 507, L. 1989; amd. Sec. 10, Ch. 640, L. 1991; amd. Sec. 3, Ch. 22, L. 1995.

Compiler's Comments

1995 Amendment: Chapter 22 in (3), at end of second sentence, inserted "or from particular port, transportation, storage, or other facilities of the authority"; inserted (5)(b) allowing an authority to pledge, lease, sell, mortgage, or grant a security interest in its facilities; and made minor changes in style. Amendment effective February 2, 1995.

7-14-1134. Method of funding deficiency. (1) Subject to the conditions stated in this section, the governing body of a county or of a municipality having a population in excess of 10,000 may by resolution covenant that if at any time all revenue, including taxes, appropriated and collected for bonds issued pursuant to this part are insufficient to pay principal or interest then due, it will levy a general tax upon all of the taxable property in the county or municipality for the payment of the deficiency. The governing body may further covenant that at any time a deficiency is likely to occur within 1 year for the payment of principal and interest due on the bonds, it will levy a general tax upon all the taxable property in the county or municipality for the payment of the deficiency. The taxes are not subject to any limitation of rate or amount applicable to other county or municipal taxes but are limited to a rate estimated to be sufficient to produce the amount of the deficiency. If more than one local government is included in an authority issuing bonds pursuant to this part, the local governments may apportion the obligation to levy taxes for the payment of, or in anticipation of, a deficiency in the revenue appropriated for the bonds in a manner that the local governments may determine.

(2) The resolution must state the principal amount and purpose of the bonds and the substance of the covenant respecting deficiencies.

(3) (a) A resolution is not effective until the question of its approval has been submitted to the qualified electors of the local government at a special election:

(i) called for that purpose by the governing body of the local government;
(ii) held in conjunction with a regular or primary election; and
(iii) approved by a majority of the electors voting on the question.

(b) The notice and conduct of the election is governed, to the extent applicable, as provided for municipal general obligation bonds in Title 7, chapter 7, part 42, for an election called by cities and towns, and as provided for county general obligation bonds in Title 7, chapter 7, part 22, for an election called by counties. If a majority of the electors voting on the issue vote against approval of the resolution, the local government may not make the covenant or levy a tax for the payment of deficiencies pursuant to this section. The local government or authority may issue bonds under this part payable solely from the sources referred to in 7-14-1133(1).

History: **En. Sec. 14, Ch. 456, L. 1985; amd. Sec. 48, Ch. 387, L. 1995.**

Compiler's Comments

1995 Amendment: Chapter 387 in (1), in first sentence after "10,000", deleted "with respect to bonds issued pursuant to this part by the local government or by an authority in which the local government is included"; inserted (3)(a)(ii) requiring the special election to be held in conjunction with a regular or primary election; and made minor changes in style.

7-14-1135. Debt service fund. A port authority may create a debt service fund and accumulate therein a sum determined by the governing body, together with interest thereon, for the use, repairs, maintenance, and capital outlays of a port.

History: **En. Sec. 15, Ch. 456, L. 1985.**

7-14-1136. Federal and state money. An authority may accept, receive, receipt for, and spend federal and state money and other public or private money made available by grant or loan to accomplish any of the purposes of this part. All federal money accepted under this section must be accepted and spent by the authority upon terms and conditions prescribed by the United States and consistent with state law. All state money accepted under this section must be accepted and spent by the authority upon terms and conditions prescribed by the state.

History: **En. Sec. 16, Ch. 456, L. 1985.**

7-14-1137. Tax exemption. Any property in this state acquired by an authority for port purposes pursuant to the provisions of this part, any income derived by the authority from the ownership, operation, or control thereof, including property acquired, and income derived from organizations, including corporations organized under Title 32, chapter 4, whose purpose is to advance the economic development of its jurisdiction and of the state and its citizens, are exempt from taxation to the same extent as other property used for public purposes.

History: **En. Sec. 17, Ch. 456, L. 1985; amd. Sec. 5, Ch. 507, L. 1989.**

Cross-References

Tax exemption for industrial park owned by port authority, 15-24-1902.

Parts 12 through 15 reserved

Part 16
Railway Authorities

7-14-1601. Definitions. As used in this part, the following definitions apply:

(1) "Authority" means a rail authority as provided in this part.
(2) "Board" means a board of county commissioners.
(3) "Common carrier" means a railroad engaged in transportation for hire.
(4) "Directors" means the directors of the rail authority.

History: En. Sec. 1, Ch. 333, L. 1993.

7-14-1602. Purpose — public and governmental functions. (1) The purpose of an authority is to provide for the preservation and improvement of abandoned rail service for agriculture, industry, or passenger traffic and to provide for the preservation of abandoned railroad right-of-way for future transportation uses, when determined to be practicable and necessary for the public welfare, particularly in the case of the abandonment of rail lines.

(2) The acquisition of land pursuant to this part; the planning, acquisition, establishment, construction, improvement, maintenance, equipment, operation, regulation, and protection of authority facilities; and the exercise of powers granted to authorities and other public agencies to be severally or jointly exercised are public and governmental functions, exercised for public purpose, and matters of public necessity. All land and other property acquired and used by or on behalf of an authority or other public agency, as provided in this part, must be used for public and governmental purposes and as a matter of public necessity.

History: En. Sec. 2, Ch. 333, L. 1993.

7-14-1603 through 7-14-1610 reserved.

7-14-1611. Resolution of intention to create rail authority. (1) A board of county commissioners may create an authority encompassing an entire county or a portion of a county. Before creating an authority, the board shall pass a resolution of intention.

(2) The resolution must state:
(a) the proposed name of the authority;
(b) the proposed boundaries of the authority; and
(c) the number of directors of the authority.

History: En. Sec. 3, Ch. 333, L. 1993.

7-14-1612. Notice of resolution — hearing. (1) The text of the resolution referred to in 7-14-1611 must be published as provided in 7-1-2121.

(2) At the time for the hearing, the board shall hear testimony for and against the creation of the authority. The hearing may be adjourned from time to time for the determination of additional information or for hearing proponents or opponents, but an adjournment may not exceed 2 weeks after the date originally published for the hearing.

History: En. Sec. 4, Ch. 333, L. 1993.

7-14-1613. County rail authority. (1) The board, upon completion of the public hearing, may pass a resolution creating an authority.

(2) At the same time, the board shall appoint five persons as directors of the authority. A director shall hold office for 2 years and until a successor is appointed. Three of the directors first appointed shall hold office for 1 year. A vacancy occurring other than by expiration of a term must be filled for the unexpired term by the board.

(3) A director must reside within the boundaries of the authority.

History: **En. Sec. 5, Ch. 333, L. 1993.**

7-14-1614 through 7-14-1620 reserved.

7-14-1621. Regional rail authority. (1) Two or more counties may by joint resolution create a regional rail authority. The resolution creating a regional rail authority must create a regional rail authority board of not less than five directors. The number of directors to be appointed, their term of office, and their qualifications must be provided for in the resolution.

(2) The text of the resolution must be published as provided in 7-1-2121 in each county in which the territory of the proposed authority lies. A county may not adopt a resolution authorized by this section without a public hearing.

(3) After passage of the resolution by the board of each county with territory included in the authority, the boards shall jointly appoint the initial directors of the regional rail authority.

History: **En. Sec. 6, Ch. 333, L. 1993.**

7-14-1622. Directors. (1) The powers of an authority are vested in the directors of the authority. A majority of the directors constitutes a quorum for the purpose of conducting business of the authority and exercising its powers for all other purposes. Action may be taken by the authority upon a vote of not less than a majority of the directors present.

(2) There must be elected a presiding officer, a vice presiding officer, a treasurer, and a secretary from among the directors. An authority may employ an executive director, technical experts, and other officers, agents, and employees, permanent and temporary, as necessary and shall determine their qualifications, duties, and compensation. An authority may delegate to one or more of its agents or employees powers or duties as it considers proper.

(3) A director of an authority is entitled to receive expenses, as provided in 2-18-501 through 2-18-503, incurred in the performance of the director's duties.

History: **En. Sec. 7, Ch. 333, L. 1993.**

7-14-1623. Cooperation of county. For the purpose of cooperating in the planning, construction, or operation of railroads pursuant to this part, a county for which an authority has been created may:

(1) lend or donate money to the authority;

(2) provide that all or a portion of the taxes or funds available or required by law to be used by the county for railroad purposes be transferred to the authority as the funds become available to the county;

(3) furnish facilities or improvements that it is empowered to provide in connection with the railroad or railroad facilities;

(4) dedicate, sell, convey, or lease its interest in property or grant easements, licenses, or other rights or privileges to the authority;

(5) do all things, whether or not specifically authorized in this section and not otherwise prohibited by law, that are necessary or convenient to aid and cooperate with the authority in the planning, undertaking, construction, or operation of railroads and railroad facilities; and

(6) enter into agreements with the authority respecting action to be taken by the county pursuant to the provisions of this section.

History: **En. Sec. 8, Ch. 333, L. 1993.**

7-14-1624. General powers of authority. An authority has all the powers necessary to carry out the purposes of this part, including but not limited to the power to:

(1) sue and be sued, have a seal, and have perpetual succession;

(2) execute contracts and other instruments and take other action as may be necessary to carry out the purposes of this part;

(3) receive and disburse federal, state, and other funds, public or private, made available by grant, loan, contribution, tax levy, or other source to accomplish the purposes of this part. Federal money accepted under this section must be accepted and spent by the authority upon terms and conditions prescribed by the United States and consistent with state law. All state money accepted under this section must be accepted and spent by the authority upon terms and conditions prescribed by the state.

(4) sell, lease, or otherwise dispose of real or personal property acquired pursuant to this part. The disposal must be in accordance with the laws of this state governing the disposition of other public property.

History: En. Sec. 9, Ch. 333, L. 1993.

7-14-1625. Railroad acquisition and operation — permits — eminent domain. (1) Within the boundaries of the authority, the authority may establish, acquire, construct, purchase, improve, maintain, equip, operate, regulate, and protect railroads and railroad facilities, including but not limited to terminal buildings, roadways, crossings, bridges, causeways, tunnels, equipment, and rolling stock, as may be necessary to carry out the provisions of this part.

(2) The authority may apply to a public agency for permits, consents, authorizations, and approvals required for the acquisition and operation of a railroad and take all actions necessary to comply with their conditions.

(3) The authority may acquire property for a public purpose in the same manner as a county, except that the authority does not have the power of eminent domain with respect to property owned by another authority or by a political subdivision or property owned by a railroad corporation unless the interstate commerce commission or another authority with power to make the finding has found that the public convenience and necessity permit discontinuance of rail service on the property.

History: En. Sec. 10, Ch. 333, L. 1993.

7-14-1626 through 7-14-1630 reserved.

7-14-1631. Rules. An authority may adopt, amend, and repeal reasonable resolutions, rules, and orders as it considers necessary for its own administration, management, and governance as well as for the management, governance, or use of a railroad or railroad facility owned by or under its control. A rule, order, or standard prescribed by the authority may not be inconsistent with or contrary to an act of the congress of the United States or a regulation promulgated or standard established pursuant to an act of congress. The authority shall keep a copy of its rules on file for public inspection at the principal office of the authority, as determined by the directors.

History: En. Sec. 11, Ch. 333, L. 1993.

7-14-1632. Mill levy authorized — limitation. The authority may certify annually to the board of county commissioners the amount of money necessary for the operation of the authority. Upon approval by the electorate, the board shall annually, at the time of levying county taxes, fix and levy a tax in mills upon all property within the boundaries of the authority clearly sufficient to raise the amount certified by the authority. The tax levied for authority purposes other than for payment of bonded indebtedness may not in a year exceed 6 mills on each dollar of taxable valuation of property within the authority.

History: **En. Sec. 12, Ch. 333, L. 1993.**

7-14-1633. Election required to impose mill levy. (1) Before the levy provided for in 7-14-1632 may be made, the question must be submitted to a vote of the people at the next regular school election held in accordance with 20-3-304 or by mail ballot election as provided by Title 13, chapter 19, in the following form:

"Shall there be a levy of (specify number, not to exceed 6) mills upon the taxable property of the (specify rail authority) necessary to raise the sum of (specify the approximate amount to be raised by the tax levy) for the purpose of (specify purpose for which the levy is made)?

☐ FOR the tax levy.

☐ AGAINST the tax levy."

(2) Notice of the election, clearly stating the amount and the purpose of the levy, must be given and the election must be held and conducted and the returns must be made in the manner prescribed by law for the submission of questions to the electors under the general election laws.

History: **En. Sec. 13, Ch. 333, L. 1993.**

7-14-1634. Collection of tax and disposition of funds. (1) The procedure for the collection of the tax must be in accordance with the existing laws of the state of Montana.

(2) The proceeds from the tax levy must be deposited in a special account in which other revenues of the authority are deposited and may be expended by the authority as provided for in this part.

History: **En. Sec. 14, Ch. 333, L. 1993.**

7-14-1635. Contracts for operation and use of facilities. (1) In connection with the operation of a railroad or a railroad facility owned or controlled by an authority, the authority may enter into contracts, leases, and other arrangements:

(a) granting the privilege of operating or using the railroad or railroad facility;

(b) leasing a railroad for operation by the lessee. However, a person may not be authorized to operate a railroad other than as a common carrier.

(c) granting the privilege of supplying goods, commodities, services, or facilities along rail lines or in or upon other property; and

(d) making available services to be furnished by the authority or its agents.

(2) In each case, the authority may establish the terms and conditions and fix the charges, rentals, or fees that must be reasonable and uniform for the same class of privilege or service and that must be established with regard to

the property and improvements used and the expenses of operation to the authority.

(3) The authority may remit funds available for investment to the state treasurer for investment under the direction of the board of investments as part of the pooled investment fund.

History: **En. Sec. 15, Ch. 333, L. 1993.**

7-14-1636. Bonds and obligations. (1) An authority may borrow money for any of its corporate purposes and issue bonds for its purposes, including refunding bonds, in a form and upon terms as it determines, payable out of any revenue of the authority, including revenue derived from:

(a) a railroad;

(b) taxes levied pursuant to 7-14-1632;

(c) grants or contributions from the federal government; or

(d) other sources.

(2) The bonds may be issued by resolution of the authority, without an election and without any limitation of amount, except that bonds may not be issued at any time if the total amount of principal and interest to become due in a year on the bonds and on any then-outstanding bonds for which revenue from the same source is pledged exceeds the amount of the revenue to be received in that year, as estimated in the resolution authorizing the issuance of the bonds. The authority shall take all action necessary and possible to impose, maintain, and collect rates, charges, and rentals and to request taxes, if any are pledged, sufficient to make the revenue from the pledged source in the year at least equal to the amount of principal and interest due in that year.

(3) The bonds may be sold at public or private sale and may bear interest as provided in 17-5-102. Bonds issued by an authority pursuant to this part may be payable as to principal and interest solely from revenue of the authority and must state on their face the applicable limitations or restrictions regarding the source from which the principal and interest are payable.

(4) Bonds issued by an authority pursuant to the provisions of this part are declared to be issued for an essential public and governmental purpose by a political subdivision within the meaning of 15-30-111(2)(a).

(5) For the security of the bonds, the authority may by resolution make and enter into any covenant, agreement, or indenture and may exercise any additional powers authorized to be exercised by a municipality under Title 7, chapter 7, parts 44 and 45. The sums required from time to time to pay principal and interest and to create and maintain a reserve for the bonds may be paid from the revenue referred to in this part, prior to the payment of current costs of operation and maintenance of the facilities.

History: **En. Sec. 16, Ch. 333, L. 1993.**

7-14-1637. Debt service fund. An authority may create a debt service fund and accumulate in the fund a sum determined by the directors, together with the interest on the sum, for the use, repair, maintenance, and capital outlay expenses of a railroad.

History: **En. Sec. 17, Ch. 333, L. 1993.**

7-14-1638. Tax exemption. Property in this state acquired by an authority for railroad purposes pursuant to the provisions of this part and income derived by the authority from the ownership, operation, or control of property are exempt from taxation to the same extent as other property used for public purposes.

History: **En. Sec. 18, Ch. 333, L. 1993.**

7-14-1639. Procedure to enlarge authority. (1) The directors of an authority may by resolution enlarge the boundaries of the authority in accordance with the procedures of notice and hearing in 7-14-1612.

(2) The property within an addition to the authority is subject to the existing indebtedness of the authority.

History: **En. Sec. 19, Ch. 333, L. 1993.**

Parts 17 through 20 reserved

Part 21

General Provisions Related to County Roads

Part Cross-References

Road improvement districts, Title 7, ch. 14, part 29.

7-14-2101. General powers of county relating to roads and bridges. (1) The board of county commissioners, under such limitations and restrictions as are prescribed by law, may:

(a) (i) lay out, maintain, control, and manage county roads and bridges within the county;

(ii) levy taxes therefor as provided by law;

(b) (i) in the exercise of sound discretion, jointly with other counties, lay out, maintain, control, manage, and improve county roads and bridges in adjacent counties, wholly or in such part as may be agreed upon between the boards of the counties concerned;

(ii) levy taxes therefor as provided by law;

(c) (i) enter into agreements for adjusted annual contributions over not more than 6 years toward the cost of joint highway or bridge construction projects entered into in cooperation with other counties, the state, or the United States;

(ii) place such a project in the budget and levy taxes therefor as provided by law.

(2) (a) Unless the context requires otherwise, county road means any public highway opened, established, constructed, maintained, abandoned, or discontinued by a county in accordance with this chapter.

(b) Unless the context requires otherwise, bridge includes rights-of-way or other interest in land, abutments, superstructures, piers, and approaches except dirt fills.

History: **(1)En. Subd. 4, Sec. 1, Ch. 100, L. 1931; re-en. Sec. 4465.3, R.C.M. 1935; amd. Sec. 12-101, Ch. 197, L. 1965; Sec. 16-1004, R.C.M. 1947; (2)En. Sec. 2-101, Ch. 197, L. 1965; amd. Sec. 69, Ch. 316, L. 1974; Sec. 32-2203, R.C.M. 1947; R.C.M. 1947, 16-1004(part), 32-2203(4), (11).**

Cross-References

Flood control projects, Title 76, ch. 5, part 11.

7-14-2102. General powers relating to county roads — assignment of responsibility. Each board of county commissioners may in its discretion do whatever may be necessary for the best interest of the county roads and the road districts. The board may assign responsibility for the supervision of county roads to a county surveyor or to a county road superintendent or may allocate the duties between the county surveyor and the county road superintendent.

History: En. Sec. 5-101, Ch. 197, L. 1965; amd. Sec. 104, Ch. 316, L. 1974; R.C.M. 1947, 32-2801(4); amd. Sec. 2, Ch. 336, L. 1995.

Compiler's Comments

1995 Amendment: Chapter 336 inserted second sentence allowing Board to assign or allocate responsibility to county surveyor or to county road superintendent.

7-14-2103. Duties of county commissioners concerning county roads. (1) Each board of county commissioners has general supervision over the county roads within the county.

(2) Each board may survey, view, lay out, record, open, work, and maintain county roads that are petitioned for by freeholders. Guideposts must be erected.

(3) Each board may discontinue or abandon county roads when freeholders properly petition for discontinuance or abandonment.

History: En. Sec. 5-101, Ch. 197, L. 1965; amd. Sec. 104, Ch. 316, L. 1974; R.C.M. 1947, 32-2801(part); amd. Sec. 1, Ch. 253, L. 1993.

Cross-References

Petition procedure, Title 7, ch. 14, part 26.

7-14-2104. Repealed. Sec. 1, Ch. 211, L. 1979.

History: En. Sec. 1, Ch. 153, L. 1939; R.C.M. 1947, 17-609.

7-14-2105. Reports to department of transportation. (1) Each board of county commissioners shall make reports relating to roads under its supervision which are requested by the department of transportation.

(2) The board and the road supervisor of a county and all other officers who may have the care and supervision of the public highways and bridges shall, upon the written request of the department, furnish all available information in connection with the construction and maintenance of the highways and bridges in their respective districts or counties.

History: (1)En. Sec. 5-101, Ch. 197, L. 1965; amd. Sec. 104, Ch. 316, L. 1974; Sec. 32-2801, R.C.M. 1947; (2)En. Sec. 5-115, Ch. 197, L. 1965; amd. Sec. 107, Ch. 316, L. 1974; Sec. 32-2815, R.C.M. 1947; R.C.M. 1947, 32-2801(5), 32-2815; amd. Sec. 3, Ch. 512, L. 1991.

7-14-2106. Parking regulations in unincorporated places. The board of county commissioners has jurisdiction and power, under such limitations and restrictions as are prescribed by law, to establish by resolution parking regulations for the purpose of regulating the parking of motor vehicles in unincorporated towns and villages.

History: En. Subd. 2, Sec. 1, Ch. 100, L. 1931; re-en. Sec. 4465.1, R.C.M. 1935; amd. Sec. 1, Ch. 72, L. 1951; R.C.M. 1947, 16-1002(part).

7-14-2107. Acquisition of right-of-way. (1) Each board of county commissioners shall contract, agree for, purchase, or otherwise lawfully acquire right-of-way for county roads over private property. It may institute proceedings under Title 70, chapter 30, paying for such right-of-way from the county road fund.

(2) Each board shall acquire rights-of-way for county roads and discontinue or abandon them only upon proper petition therefor.

(3) By taking or accepting interests in real property for county roads, the public acquires only the right-of-way and the incidents necessary to enjoying and maintaining it.

History: (1)En. Sec. 5-102, Ch. 197, L. 1965; Sec. 32-2802, R.C.M. 1947; (2), (3)En. Sec. 8-201, Ch. 197, L. 1965; Sec. 32-4001, R.C.M. 1947; R.C.M. 1947, 32-2802(part), 32-4001.

Cross-References

Petition to establish, alter, or abandon county road, Title 7, ch. 14, part 26.

7-14-2108. Recording of instruments related to acquisition of right-of-way. (1) When a right-of-way is voluntarily given or purchased, an instrument in writing conveying the right-of-way and incidents thereto must be signed and acknowledged by the person making it. It must then be recorded in the office of the clerk of the county where the land is located.

(2) When a right-of-way is condemned, a certified copy of the judgment of the court must be made. It must then be filed in the office of the clerk of the county where the land is located.

(3) Both types of instruments shall particularly describe the land.

History: En. Sec. 8-212, Ch. 197, L. 1965; R.C.M. 1947, 32-4012.

7-14-2109. Transfer to state of county responsibility for right-of-way. A board of county commissioners shall transfer its control over and responsibility for a county road when the department of transportation notifies it that:

(1) a federal or state highway has been established and definitely located over a county road;

(2) funds are available for immediate construction of the highway;

(3) the highway will be improved and maintained by the department.

History: En. Sec. 8-216, Ch. 197. L. 1965; amd. Sec. 149, Ch. 316, L. 1974; R.C.M. 1947, 32-4016; amd. Sec. 3, Ch. 512, L. 1991.

7-14-2110. Preparation of plat books. Each board of county commissioners may in its discretion order the county surveyor, or some other surveyor if the county surveyor is incompetent, to prepare suitable platbooks. Each board shall have recorded in it with the county clerk a full description of each county road, showing each course by bearing and distance, a full and complete map of the road, and a record of all proceedings with reference to the road.

History: En. Sec. 5-103, Ch. 197, L. 1965; amd. Sec. 2, Ch. 274, L. 1967; amd. Sec. 105, Ch. 316, L. 1974; R.C.M. 1947, 32-2803(1).

7-14-2111. Layout of roads. County roads must be laid out and opened when practicable upon subdivision or section lines. However, when public purposes shall be best served thereby, roads may be laid out in diagonal lines.

History: En. Sec. 5-109, Ch. 197, L. 1965; R.C.M. 1947, 32-2809.

7-14-2112. Width of roads. (1) The width of all county roads, except bridges, alleys, or lanes, must be 60 feet unless a greater or smaller width is ordered by the board of county commissioners on petition of an interested person.

(2) The width of all private highways and byroads, except bridges, must be at least 20 feet.

(3) Nothing in this section shall be construed as increasing or decreasing the width of either kind of highway or road established or used as such prior to December 31, 1966.

History: **En. Sec. 5-108, Ch. 197, L. 1965; R.C.M. 1947, 32-2808.**

7-14-2113. County authority to establish speed limits. A board of county commissioners may, by ordinance, establish a special speed limit in accordance with 61-8-306 and 61-8-310 on any county road.

History: **En. Sec. 1, Ch. 614, L. 1985.**

7-14-2114 through 7-14-2120 reserved.

7-14-2121. County road districts. (1) The board of county commissioners may in its discretion divide the county into suitable road districts and place each district in the charge of a competent road supervisor. The board shall order and direct each supervisor in the work to be done in his district.

(2) If the board does not divide the county into districts, the county itself shall constitute one road district.

History: **En. Sec. 5-101, Ch. 197, L. 1965; amd. Sec. 104, Ch. 316, L. 1974; R.C.M. 1947, 32-2801(part).**

7-14-2122. County road supervisor. (1) Each board of county commissioners may in its discretion employ a competent road supervisor, who shall serve during the pleasure of the board. In any county in which the county surveyor is not paid an annual salary, he may by agreement be employed by the board to perform the services of road supervisor. He shall not be paid for any duty otherwise required by law to be performed by him as county surveyor.

(2) Under the direction and control of the board, he shall:

(a) prescribe the times and places for all work to be done on the county roads;

(b) report any delinquency or inefficiency of any person employed on any road;

(c) perform other duties which are prescribed by the board.

History: **En. Sec. 5-103, Ch. 197, L. 1965; amd. Sec. 2, Ch. 274, L. 1967; amd. Sec. 105, Ch. 316, L. 1974; R.C.M. 1947, 32-2803(2), (3).**

7-14-2123. Acquisition of machinery and materials. (1) Out of the county road fund, each board of county commissioners may:

(a) purchase and operate grading and other machinery necessary or desirable for the improvement of the county roads;

(b) acquire deposits or quarries of suitable road-building material by purchase, condemnation, or lease.

(2) Each board may also acquire such road-building material by gift.

History: **En. Sec. 5-106, Ch. 197, L. 1965; R.C.M. 1947, 32-2806(1), (2).**

7-14-2124. Disposition of surplus crushed rock and gravel. (1) Any crushed rock or gravel not directly used or needed by the county in the construction, repair, or maintenance of its roads may be sold by the board of county commissioners at not less than actual cost of production to any person, firm, or corporation desiring to use it upon any public street or highway in the county.

(2) The proceeds of any such sale shall be paid into the county road fund.

History: **En. Sec. 5-106, Ch. 197, L. 1965; R.C.M. 1947, 32-2806(3).**

7-14-2125. Inspection of roads and work on roads. (1) The board of county commissioners may direct the county surveyor or some member or members of the board to inspect the condition of any road. It may direct such persons to inspect any work, being done under contract or otherwise, which is under the direction, supervision, or control of the board. Such inspections may be made before any work is commenced, during its progress, or after completion and before payment.

(2) Proper minute entries of such inspections must be made by the surveyor or board member or members at the next regular meeting of the board.

History: En. Sec. 5-105, Ch. 197, L. 1965; amd. Sec. 1, Ch. 178, L. 1967; amd. Sec. 1, Ch. 446, L. 1973; R.C.M. 1947, 32-2805(1), (3).

7-14-2126. Compensation for making inspections. The person or persons making the inspections authorized by 7-14-2125 shall receive a daily salary equal to that established in 7-4-2107(2) and actual expenses if he receives no other compensation for that day and is not on an annual salary. The claims shall be audited and allowed in the same manner as other claims against the county.

History: En. Sec. 5-105, Ch. 197, L. 1965; amd. Sec. 1, Ch. 178, L. 1967; amd. Sec. 1, Ch. 446, L. 1973; R.C.M. 1947, 32-2805(2); amd. Sec. 2, Ch. 264, L. 1985.

7-14-2127. Temporary limitation or prohibition of traffic. Each board of county commissioners may in its discretion limit or forbid, temporarily, any traffic or class of traffic on the county roads or any part thereof when it is necessary in order to preserve or repair such roads.

History: En. Sec. 5-102, Ch. 197, L. 1965; R.C.M. 1947, 32-2802(4).

7-14-2128. Designation of emergency area near construction project. (1) A board of county commissioners may designate a portion of a county or state secondary road as an emergency area if increased traffic due to a construction project threatens public safety.

(2) Notice of the designation shall be printed in a newspaper of general circulation in the county. The notice shall describe the portion of road to be designated as an emergency area and the reason for the designation. The board shall post the area or roads affected with adequate signs.

(3) The board shall remove the emergency designation within 30 days after the cessation of the increased traffic.

History: (1)En. Sec. 1, Ch. 118, L. 1963; Sec. 32-317, R.C.M. 1947; redes. 32-2816 by Sec. 2, Ch. 316, L. 1974; Sec. 32-2816, R.C.M. 1947; (2), (3)En. Sec. 2, Ch. 118, L. 1963; Sec. 32-318, R.C.M. 1947; amd. and redes. 32-2817 by Sec. 3, Ch. 316, L. 1974; Sec. 32-2817, R.C.M. 1947; R.C.M. 1947, 32-2816, 32-2817.

7-14-2129. Control of livestock in emergency area. (1) A person who owns or has custody of livestock may not permit the livestock to run upon the emergency area unless the livestock is under herd in transit across the emergency area in the custody of an attendant.

(2) A sheriff or other peace officer may impound livestock running on an emergency area without an attendant and shall notify the rightful owner of such impounded livestock. If the sheriff or peace officer cannot determine the rightful owner, then a state stock inspector of the department of livestock or a deputy state stock inspector of the county may be called to examine the livestock for brands to determine ownership. The rightful owners shall be

notified by the inspector, and the usual inspection fees and mileage shall be paid by the owner of such livestock.

(3) A person who violates subsection (1) is guilty of a misdemeanor and shall be fined not less than $10 or more than $50 for each violation.

History: (1)En. Sec. 3, Ch. 118, L. 1963; Sec. 32-319, R.C.M. 1947; amd. and redes. 32-2818 by Sec. 4, Ch. 316, L. 1974; Sec. 32-2818, R.C.M. 1947; (2)En. Sec. 4, Ch. 118, L. 1963; Sec. 32-320, R.C.M. 1947; amd. and redes. 32-2819 by Sec. 5, Ch. 316, L. 1974; Sec. 32-2819, R.C.M. 1947; (3)En. Sec. 5, Ch. 118, L. 1963; Sec. 32-321, R.C.M. 1947; amd. and redes. 32-2820 by Sec. 6, Ch. 316, L. 1974; Sec. 32-2820, R.C.M. 1947; R.C.M. 1947, 32-2818, 32-2819, 32-2820.

7-14-2130. Control of the movement of livestock on or near county roads. (1) Cattle guards, appurtenances, and gates may be constructed and maintained adjacent to county roads.

(2) Where a county road connects with a state or federal highway which is fenced on both sides, the board of county commissioners may construct and maintain extensions of the fence across the right-of-way of the intersecting county road. The board shall construct a pass which will permit passage of vehicles but will prevent loose livestock from passing onto the state or federal highway. In the extensions of the fence, there shall be maintained a gate to permit the passage of livestock and vehicles.

(3) Each board may construct on county roads passes which shall permit the travel of vehicles but which shall prevent the passage of loose livestock. Where necessary, gates shall be maintained to permit the passage of livestock. Such passes may be removed when, in the judgment of the board, the need therefor no longer exists.

History: (1)En. Sec. 5-102, Ch. 197, L. 1965; Sec. 32-2802, R.C.M. 1947; (2)En. Sec. 5-110, Ch. 197, L. 1965; Sec. 32-2810, R.C.M. 1947; (3)En. Sec. 5-111, Ch. 197, L. 1965; Sec. 32-2811, R.C.M. 1947; R.C.M. 1947, 32-2802(part), 32-2810, 32-2811.

Cross-References

Containment of livestock, Title 81, ch. 4.

7-14-2131. Reseeding of right-of-way. Whenever the natural sod cover on right-of-way areas is disturbed by construction of county roads, irrigation ditches, drain ditches, or otherwise, the board of county commissioners shall require the person or agency responsible for the disturbance to comply with 7-22-2152.

History: En. Sec. 5-113, Ch. 197, L. 1965; R.C.M. 1947, 32-2813; amd. Sec. 26, Ch. 607, L. 1985.

7-14-2132. Control of weeds along roads and highways. (1) The district weed board shall control noxious weeds on the county roads.

(2) If the department of transportation does not control noxious weeds on state and federal highways in any county, the district weed board shall control them. Upon presentation by the board of a verified account of the expenses incurred, the costs of control shall be paid by the department.

History: En. Sec. 5-114, Ch. 197, L. 1965; amd. Sec. 106, Ch. 316, L. 1974; R.C.M. 1947, 32-2814; amd. Sec. 27, Ch. 607, L. 1985; amd. Sec. 3, Ch. 512, L. 1991.

Cross-References

Noxious weed control, Title 80, ch. 7, part
7.

7-14-2133. Removal of obstructions on county roads. (1) Whenever any county road becomes obstructed, the board of county commissioners, or the county surveyor if he is in charge, shall remove the obstruction upon being notified thereof.

(2) Nothing in this section shall be construed as holding the board or any member responsible or liable for anything other than willful, intentional neglect or failure to act.

History: En. Sec. 5-204, Ch. 197, L. 1965; R.C.M. 32-2904(part).

7-14-2134. Removal of highway encroachment. (1) If any highway is encroached upon by fence, building, or otherwise, the road supervisor or county surveyor of the district must give notice, orally or in writing, requiring the encroachment to be removed from the highway.

(2) If the encroachment obstructs and prevents the use of the highway for vehicles, the road supervisor or county surveyor must immediately remove the same.

(3) The board of county commissioners may at any time order the road supervisor or county surveyor to immediately remove any encroachment.

History: En. Sec. 11-105, Ch. 197, L. 1965; R.C.M. 1947, 32-4405.

Cross-References

Highway encroachments, Title 60, ch. 6.

7-14-2135. Notice to remove encroachment. (1) Notice to remove the encroachment immediately, specifying the breadth of the highway and the place and extent of the encroachment, must be given to the occupant or owner of the land or the person owning or causing the encroachment.

(2) Notice must be given in the following manner:

(a) by leaving it at his place of residence if such person resides in the county; or

(b) by posting it on the encroachment if such person does not reside in the county.

History: En. Sec. 11-106, Ch. 197, L. 1965; R.C.M. 1947, 32-4406.

7-14-2136. Penalty for failure to remove encroachment promptly. If the encroachment is not removed immediately or removal is not diligently conducted, the one who causes, owns, or controls the encroachment is liable to a penalty of $10 for each day the same continues.

History: En. Sec. 11-107, Ch. 197, L. 1965; R.C.M. 1947, 32-4407.

7-14-2137. Legal actions to remove encroachments or recover costs. (1) (a) If the encroachment is denied, the road supervisor shall commence an action in the proper court to abate the same as a nuisance.

(b) If he recovers judgment, he may have his costs and $10 for every day such nuisance remains after notice.

(2) (a) If the encroachment is not denied and is not removed for 5 days after notice is complete, the road supervisor or county surveyor may remove it at the expense of the owner or occupant of the land or of the person owning or controlling the encroachment.

(b) He may recover the expense of removal, $10 for each day the encroachment remains after notice, and costs in an action brought for that purpose.

History: En. Sec. 11-108, Ch. 197, L. 1965; R.C.M. 1947, 32-4408.

Cross-References

Public nuisances, Title 27, ch. 30, part 2.

7-14-2138. Prosecution by county attorney. (1) The county attorney, upon complaint of the road supervisor, county surveyor, or any other person, shall prosecute all actions provided in parts 21 through 28 in the name of the state of Montana.

(2) All penalties, except those paid to a justice's court, shall be paid into the general fund of the county.

History: En. Sec. 11-109, Ch. 197, L. 1965; R.C.M. 1947, 32-4409; amd. Sec. 2, Ch. 557, L. 1987.

Cross-References

Collection and disposition of fines, penalties, forfeitures, and fees collected by a Justice's Court, 3-10-601.

7-14-2139. Procedure to make excavations across highway. (1) (a) Any person contemplating the excavation or construction of any ditch, dike, flume, or canal across a public highway shall obtain a written permit from the board of county commissioners, road supervisor, or county surveyor of said district before beginning construction or excavation.

(b) Any person obtaining said written permit shall bridge at once, in accordance with plans and specifications furnished by the board.

(2) Any such bridge shall be maintained by the county.

History: En. Sec. 11-103, Ch. 197, L. 1965; R.C.M. 1947, 32-4403(1), (2).

7-14-2140. Prevention of water flow over highway. Any person obtaining a construction permit or any person using the water of a ditch, dike, flume, or canal referred to in 7-14-2139 shall keep the same in repair where such water may flow over or in any way injure a public highway.

History: En. Sec. 11-103, Ch. 197, L. 1965; R.C.M. 1947, 32-4403(3).

7-14-2141. Liability for permitting water to overflow. (1) Every person who excavates or constructs or owns any ditch, dike, flume, or canal or stores, distributes, or uses water for any purpose and permits the water to flow over any public highway to the injury thereof, upon notification by the board of county commissioners, road supervisor, or county surveyor of the district where such overflow occurred, must repair the damages occasioned. If such repairs are not made within a reasonable time, the district must make them and recover the expense thereof in an action at law.

(2) Every person constructing, owning, or using such ditch or flume who permits an overflow is liable as provided in 45-8-111.

History: En. Sec. 11-104, Ch. 197, L. 1965; R.C.M. 1947, 32-4404.

Part 22

General Provisions Related to Bridges

7-14-2201. Maintenance and control of bridges. (1) Each board of county commissioners shall maintain all public bridges other than those maintained by the department of transportation.

(2) The board shall manage and control all bridges referred to in this part. It shall direct the method and time of making repairs, planking, replanking, paving, and repaving.

(3) (a) Whenever any bridge needs repair or becomes dangerous for the passage of vehicles or persons, the board, or the county surveyor if he is in charge, shall repair the bridge upon being notified thereof.

(b) Nothing in this subsection shall be construed as holding the board or any member responsible or liable for anything other than willful, intentional neglect or failure to act.

(4) In this part "public bridges" means public bridges located in towns or cities and bridges located on county roads maintained by the county.

History: (1)En. Sec. 5-201, Ch. 197, L. 1965; amd. Sec. 108, Ch. 316, L. 1974; Sec. 32-2901, R.C.M. 1947; (2)En. Sec. 5-205, Ch. 197, L. 1965; Sec. 32-2905, R.C.M. 1947; (3)En. Sec. 5-204, Ch. 197, L. 1965; Sec. 32-2904, R.C.M. 1947; R.C.M. 1947, 32-2901, 32-2904(part), 32-2905(1); (4)En. Sec. 1, Ch. 194, L. 1979; amd. Sec. 3, Ch. 512, L. 1991.

7-14-2202. Construction and maintenance of bridges crossing county lines. Bridges crossing the line between counties shall be constructed and maintained by the counties into which the bridges reach. Each county shall pay such portion of the costs of construction and maintenance as shall have been previously agreed upon by the respective boards.

History: En. Sec. 5-206, Ch. 197, L. 1965; R.C.M. 1947, 32-2906.

7-14-2203. Repairs to streambeds, watercourses, and banks. The board of county commissioners may also make repairs to streambeds and watercourses and the banks thereof when any bridge is in danger of being damaged or lost because of erosion or changes in the beds or banks.

History: En. Sec. 5-205, Ch. 197, L. 1965; R.C.M. 1947, 32-2905(2).

7-14-2204. Construction and maintenance of bridges in municipalities. (1) Each board of county commissioners shall construct and maintain every bridge over a natural stream necessary to be constructed and maintained in any city or town.

(2) The city or town in which any such bridge is situated shall pay the whole or such part, not less than one-half, to be determined by the board, of the cost of planking, replanking, paving, or repaving the bridge. The city or town shall construct and maintain in good repair the bridge approaches.

(3) Such bridges and all persons on them shall be subject to the reasonable police regulations of the city or town in which any such bridge is situated.

History: (1), (2)En. Sec. 5-202, Ch. 197, L. 1965; Sec. 32-2902, R.C.M. 1947; (3)En. Sec. 5-205, Ch. 197, L. 1965; Sec. 32-2905, R.C.M. 1947; R.C.M. 1947, 32-2902, 32-2905(3).

7-14-2205. Construction of bridge in municipality — election. (1) Before undertaking the construction in any city or town of any bridge, the cost of which exceeds $10,000, the board of county commissioners shall submit to the qualified electors of the county at a general election or a special election held in conjunction with a regular or primary election the question of whether the bridge is to be constructed and paid for by the county.

(2) (a) If the electors vote in favor of construction, the board may issue and sell bonds of the county in the amount authorized for the construction of the bridge. Bonds must be issued under the regulations that apply to other bonds of the county.

(b) The bridge must be constructed using the proceeds of the bond sale.

(3) If the cost of the bridge does not exceed the amount authorized to be raised by a special tax, it may be levied as provided in 7-14-2503.

History: En. Sec. 5-203, Ch. 197, L. 1965; R.C.M. 1947, 32-2903; amd. Sec. 49, Ch. 387, L. 1995.

Compiler's Comments

1995 Amendment: Chapter 387 in (1) inserted "held in conjunction with a regular or primary election"; and made minor changes in style.

7-14-2206. Use of bridges in municipalities by street railway. (1) Before any bridge constructed and maintained by the county in any city or town may be used as a part of any street or suburban railway, the owner of that railway shall pay into the county bridge fund a sum determined by the board which shall not be less than one-fourth or more than one-half of the cost of construction of the bridge.

(2) During the time the bridge is used by the railway, the railway owner shall also pay such portion of the cost of maintaining the bridge (not less than one-fourth or more than one-half) as is determined by the board.

History: En. Sec. 7-103, Ch. 197, L. 1965; R.C.M. 1947, 32-3603.

Cross-References

Collection by County Treasurer, 15-16-117.

Part 23

County Road Superintendent

7-14-2301. County road superintendent — appointment and compensation. (1) A board of county commissioners may appoint a county road superintendent. The superintendent has the duties, powers, and responsibilities set forth in this part. After the appointment, the county road superintendent shall serve at the pleasure of and under the direction and control of the board. The superintendent shall file with the county clerk the customary oath of office and a bond approved by the board for the faithful performance of the superintendent's duties.

(2) The superintendent must receive compensation as determined by the board.

History: Ap. p. Sec. 5-103, Ch. 197, L. 1965; amd. Sec. 2, Ch. 274, L. 1967; amd. Sec. 105, Ch. 316, L. 1974; Sec. 32-2803, R.C.M. 1947; Ap. p. Sec. 5-301, Ch. 197, L. 1965; Sec. 32-3001, R.C.M. 1947; R.C.M. 1947, 32-2803(4), 32-3001; amd. Sec. 3, Ch. 336, L. 1995.

Compiler's Comments

1995 Amendment: Chapter 336 at beginning of (1) substituted "A board" for "In counties without a county surveyor, each board"; and made minor changes in style.

7-14-2302. Duties of county road superintendent. (1) Under the direction and supervision of the board of county commissioners, the superintendent shall furnish plans and specifications for highway or bridge work. He shall be chairman of all boards of road viewers.

(2) Under such direction and supervision, he shall also:

(a) take charge of all roads, bridges, and causeways under the jurisdiction of the county;

(b) open all new roads when they are duly established and ordered to be opened by the board;

(c) perform, at the time and in the manner directed by the board, whatever shall be lawfully directed by the board concerning the public highways under the jurisdiction of the county.

History: En. Sec. 5-302, Ch. 197, L. 1965; R.C.M. 1947, 32-3002.

7-14-2303. Equipment used by road superintendent. (1) Upon the requisition of the superintendent, the board of county commissioners shall furnish any necessary equipment, tools, and implements and pay for them out of the county road fund.

(2) The superintendent shall preserve the equipment, tools, and implements and shall not allow them to be used except on public highways. At the expiration of his term of office or upon his removal therefrom, he must turn over all equipment, tools, and implements to his successor or to the board.

History: En. Sec. 5-305, Ch. 197, L. 1965; R.C.M. 1947, 32-3005.

7-14-2304. Employment of workers and hiring of equipment. Whenever it is necessary, the superintendent may employ suitable laborers, hire equipment and implements, and contract as to the wages and prices to be paid. Wages and prices shall not exceed rates established by the board of county commissioners for an 8-hour day.

History: En. Sec. 5-306, Ch. 197, L. 1965; R.C.M. 1947, 32-3006.

7-14-2305. Construction of drains and ditches to preserve roads. (1) The superintendent may open or construct drains and ditches for making and preserving roads and highways, doing as little injury as may be possible to the adjoining land.

(2) Any person who stops or obstructs any drain or ditch so constructed forfeits the sum of $50, to be recovered by the superintendent or board of county commissioners in a civil action in any court of competent jurisdiction.

(3) Any person aggrieved by the act of the superintendent may make a written complaint to the board, which, if it finds the complaint valid, may pay damages out of the county road fund.

History: En. Sec. 5-307, Ch. 197, L. 1965; R.C.M. 1947, 32-3007.

Cross-References

Civil action, Rule 81(c), M.R.Civ.P. (see Title 25, ch. 20).

7-14-2306. Records and receipts to be maintained. The superintendent shall keep correct accounts of all labor performed, equipment and implements used, and materials furnished. He shall give to each person performing work or furnishing equipment, implements, or materials a certificate stating the work performed and the price to be paid therefor.

History: En. Sec. 5-303, Ch. 197, L. 1965; R.C.M. 1947, 32-3003.

7-14-2307. Payment of claims upon presentation of superintendent's certificate. Upon the presentation of any certificate issued by the superintendent and verification of it by the holder as in other cases of claims against the county, the board of county commissioners shall have a warrant issued for the amount of the certificate, drawn on the treasury against the county road fund.

History: En. Sec. 5-304, Ch. 197, L. 1965; R.C.M. 1947, 32-3004(part); amd. Sec. 1, Ch. 253, L. 1979.

7-14-2308. Superintendent's report. At least once each year and more often if required by the board of county commissioners, the superintendent shall file a report with the board detailing the activities and expenditures of his office and containing any other information the board requires. At the first monthly or quarterly meeting held after filing of a superintendent's report, the board of county commissioners shall examine it.

History: En. Sec. 5-304, Ch. 197, L. 1965; R.C.M. 1947, 32-3004(part); amd. Sec. 2, Ch. 253, L. 1979.

Part 24
County Road and Bridge Contracts

7-14-2401. Authority to enter contracts. (1) Subject to the limitations and restrictions provided in the code for the letting of contracts, each board may let by contract the construction, maintenance, and improvement of county roads and the construction, maintenance, or repair of bridges when the amount of work to be done exceeds the sum of $1,000.

(2) As used in this part, unless the context requires otherwise, "board" means the board of county commissioners.

History: (1)En. Sec. 5-102, Ch. 197, L. 1965; Sec. 32-2802; R.C.M 1947; (2)En. Sec. 2-101, Ch. 197, L. 1965; amd. Sec. 69, Ch. 316, L. 1974; Sec. 32-2203, R.C.M. 1947; R.C.M. 1947, 32-2203(part), 32-2802(2).

Cross-References

County contracts, Title 7, ch. 5, part 23.

7-14-2402. Contracts for county roads. When the estimated cost of opening, establishing, constructing, changing, abandoning, discontinuing, or widening a county road exceeds $1,000, the work may in the discretion of the board be let by contract unless the board shall find that such work may be otherwise done at less cost.

History: En. Sec. 9-201, Ch. 197, L. 1965; R.C.M. 1947, 32-4201(1).

7-14-2403. Advertisement for bids. Before any contract authorized by 7-14-2402 shall be let, the board shall advertise for bids at least once a week for 2 consecutive weeks in a newspaper of general circulation in the county.

History: En. Sec. 9-201, Ch. 197, L. 1965; R.C.M. 1947, 32-4201(2).

7-14-2404. Competitive bids for county road contracts. Each bidder shall comply with the requirements of Title 18, chapter 1, part 2. The contract shall be awarded to the lowest responsible bidder in accordance with the requirements of 18-1-102, 18-1-112, and Title 18, chapter 2, part 4 and the board may reserve the right to reject any and all bids. When there is no prevailing rate of wages set by collective bargaining, the board shall determine the prevailing rate to be stated in the contract.

History: En. Sec. 9-202, Ch. 197, L. 1965; R.C.M. 1947, 32-4202.

7-14-2405. Performance bond to be given by successful bidder. Before entering upon performance of the work, the contractor shall comply with the requirements of Title 18, chapter 2, part 2. For the purposes of those sections with relation to contracts with the board, a contract shall not be completed until the board, while formally convened, affirmatively accepts all of the work thereunder.

History: En. Sec. 9-203, Ch. 197, L. 1965; R.C.M. 1947, 32-4203.

7-14-2406. Contracts for bridges. (1) All bids for construction or repair of bridges shall meet these requirements:

(a) If the department of transportation has adopted or established a standard plan and specifications, the bids must be submitted thereon.

(b) All bids must be sealed. Each bidder shall meet the requirements of Title 18, chapter 1, part 2.

(2) The board may reject any and all bids. If a contract is awarded, the board shall do so in accordance with the requirements of 18-1-102, 18-1-112, and Title 18, chapter 2, part 4. When there is no prevailing rate of wages set by collective bargaining, the board shall determine the prevailing rate to be stated in the contract. The contract must be entered with the unanimous consent of the members of the board.

(3) Before entering upon performance of the work, the contractor shall comply with the requirements of Title 18, chapter 2, part 2. For the purposes of those sections with relation to contracts with the board, a contract shall not be completed until the board, while formally convened, affirmatively accepts all of the work thereunder.

History: En. Sec. 9-204, Ch. 197, L. 1965; amd. Sec. 151, Ch. 316, L. 1974; R.C.M. 1947, 32-4204; amd. Sec. 3, Ch. 512, L. 1991.

Part 25

Financial Management of County Roads and Bridges

Part Cross-References

Local option motor fuel excise tax, Title 7, ch. 14, part 3.

7-14-2501. General road tax authorized. (1) To raise revenue for the construction, maintenance, or improvement of public highways, each board of county commissioners may levy a general tax upon the taxable property in the county of not more than 20 mills, except in fourth, fifth, sixth, and seventh class counties, which may levy not more than 23 mills, payable to the county treasurer. The tax from freeholders shall be collected the same as other taxes, and from nonfreeholders, as the board may direct.

(2) This section shall not apply to incorporated cities and towns which by ordinance provide for the levy of a like tax for road, street, or alley purposes.

(3) All money collected under this section shall belong to the county road fund.

History: En. Sec. 7-101, Ch. 197, L. 1965; amd. Sec. 1, Ch. 83, L. 1967; amd. Sec. 1, Ch. 199, L. 1971; R.C.M. 1947, 32-3601; amd. Sec. 1, Ch. 351, L. 1981; amd. Sec. 1, Ch. 560, L. 1989.

Cross-References

Collection by County Treasurer, 15-16-117.

7-14-2502. Special bridge tax authorized — combined ferry and bridge fund. (1) Each board may levy a special tax not to exceed 8 mills on all taxable property in the county for the purpose of constructing, maintaining, and repairing free public bridges, which includes those bridges within the municipalities.

(2) An additional levy for these purposes may be made under the following conditions:

(a) In any county where the taxable value of property in that county is $20 million or less, the board may, if necessary, levy 1 mill.

(b) In counties where the taxable value of property in that county is not less than $20 million or more than $40 million, the board may, if necessary, levy 2 mills.

(3) For the purposes of this section, a free public bridge is defined as any drainage structure located on, over, or through any road or highway.

(4) These taxes must be levied and collected in the same manner as other taxes. Except when the county has a combined ferry and bridge fund, the money shall be kept as a special bridge fund, subject to the order of the board for use as herein provided, and shall not be transferable to any other fund.

(5) If a county owns or operates a public ferry, the board may combine into a single fund the revenue from the county public ferry tax levy authorized in 7-14-2807, the revenue from the special municipal bridge levy authorized in 7-14-2503, and the revenue from the levy authorized by this section. The fund may be used for any lawful purpose authorized for bridges in this part or in Title 7, chapter 14, part 22, or for public ferries in Title 7, chapter 14, part 28.

History: En. Sec. 7-102, Ch. 197, L. 1965; amd. Sec. 1, Ch. 57, L. 1973; R.C.M. 1947, 32-3602; amd. Sec. 1, Ch. 283, L. 1979; amd. Sec. 1, Ch. 36, L. 1989; amd. Sec. 1, Ch. 147, L. 1989.

Cross-References

Incorporation of property tax levy into county all-purpose levy, 7-6-2523.

7-14-2503. Special municipal bridge tax authorized. Each board may levy a special tax not to exceed 5 mills on the taxable property in the county to defray the costs of any bridge required to be constructed and maintained by the county in any city or town.

History: En. Sec. 7-104, Ch. 197, L. 1965; R.C.M. 1947, 32-3604.

Cross-References

Cost of bridge, 7-14-2205.

7-14-2504. Additional road and bridge construction tax — election required. (1) Each board may make an additional levy upon the taxable property in the county of up to 10 mills for constructing public highways and bridges.

(2) Before the additional levy may be made, the question must be submitted to a vote of the people at a general election or a special election held in conjunction with a regular or primary election. The question must be in the following form, inserting the number of mills to be levied and the name of the county:

"Shall there be an additional levy of.... mills upon the taxable property in the county of...., state of Montana, for the purpose of constructing public highways and bridges?

☐ YES

☐ NO".

(3) A majority of the votes cast is necessary to permit the additional levy, which must be collected in the same manner as other road taxes.

History: **En. Sec. 7-105, Ch. 197, L. 1965; R.C.M. 1947, 32-3605; amd. Sec. 50, Ch. 387, L. 1995.**

Compiler's Comments

1995 Amendment: Chapter 387 in (2) inserted "held in conjunction with a regular or primary election"; and made minor changes in style.

Cross-References

Collection by County Treasurer, 15-16-117.

7-14-2505. Allocation of proceeds of oil and gas leases and reserved royalty interests to county road fund. Each board of county commissioners may allocate to the county road fund not more than 50% of the proceeds from oil and gas leases entered into and royalty interests reserved under Title 82, chapter 10, part 2.

History: **En. Sec. 1, Ch. 105, L. 1979.**

7-14-2506. County road and bridge depreciation reserve fund — limitation. (1) The governing body of a county may establish a road and bridge depreciation reserve fund to be used for acquisition and replacement of property, capital improvements, and equipment necessary to maintain and improve county road and bridge facilities and services.

(2) Budgeted county road and bridge money that has not been expended or encumbered for a fiscal year may be deposited in the road and bridge depreciation reserve fund. The fund may not exceed $200,000.

(3) Money in the road and bridge depreciation reserve fund must be invested as provided by law. Interest and income from the investment of the road and bridge depreciation reserve fund must be credited to the fund.

History: **En. Sec. 1, Ch. 522, L. 1989.**

7-14-2507 through 7-14-2510 reserved.

7-14-2511. Creation of county motor vehicle fund. When collected by the treasurer of the county in which a motor vehicle is registered, all license and registration fees for which there is no specific provision as to disposition of the fee shall be credited to the county motor vehicle fund.

History: **En. Sec. 7-201, Ch. 197, L. 1965; R.C.M. 1947, 32-3701; amd. Sec. 3, Ch. 253, L. 1979.**

Cross-References

Disposition of motor vehicle registration fees, 61-3-509.

7-14-2512. City and county road funds. (1) (a) The county treasurer shall segregate from the county motor vehicle fund and designate as the "city road fund" 50% of the net license fees derived from the registration of motor vehicles whose owners reside within the limits of any incorporated city or town.

(b) At the end of each month, the county treasurer shall pay to the appropriate city treasurer the fees held in the city road fund.

(2) The balance of the county motor vehicle fund remaining after segregation of the city road fund shall be transferred to the county road fund.

History: **(1)(a), (2)En. Sec. 7-202, Ch. 197, L. 1965; amd. Sec. 1, Ch. 89, L. 1967; amd. Sec. 1, Ch. 467, L. 1975; Sec. 32-3702, R.C.M. 1947; (1)(b)En. Sec. 7-203, Ch. 197, L. 1965; amd. Sec. 2, Ch. 467, L. 1975; Sec. 32-3703, R.C.M. 1947; R.C.M. 1947, 32-3702, 32-3703(1).**

Cross-References

Use of city road fund, 7-14-4113.

7-14-2513. Use of county road fund. The county road fund of each county shall be used for the construction, repair, and maintenance of all public highways within its boundaries which are outside the corporate limits of any city or town and are not either state or federal highways.

History: En. Sec. 7-206, Ch. 197, L. 1965; R.C.M. 1947, 32-3706.

7-14-2514. Limit on expenditures for road district. (1) The expenditures in any road district for labor and equipment, together with the compensation to be paid to the supervisor, shall not exceed the sum apportioned quarterly by the board of county commissioners to that district. However, if that sum is not sufficient, the board may appropriate any amount from the county road fund necessary for the use of such district.

(2) The full amount of all road taxes collected in remote districts shall be expended annually by the county commissioners on the roads within such districts.

History: En. Sec. 5-112, Ch. 197, L. 1965; R.C.M. 1947, 32-2812.

7-14-2515 through 7-14-2520 reserved.

7-14-2521. Bond financing authorized. Subject to the limitations and restrictions provided in the constitution and code, each board of county commissioners may issue bonds upon the faith and credit of the county for the construction or improvement of county roads, state highways, and bridges.

History: En. Sec. 5-102, Ch. 197, L. 1965; R.C.M. 1947, 32-2802(3).

Cross-References

County general obligation bonds, Title 7, ch. 7, part 22.

7-14-2522. County road and bridge bonds authorized. (1) Each board may issue, negotiate, and sell coupon bonds on the credit of the county:

(a) to construct or improve or acquire rights-of-way for public highways or bridges;

(b) to refund, pay, and redeem optional, redeemable, or maturing highway or bridge bonds when there are not sufficient funds available and it is deemed in the best interests of the county to refund the bonds.

(2) The bonds shall be issued as provided in 7-7-2201.

History: En. Sec. 7-301, Ch. 197, L. 1965; R.C.M. 1947, 32-3801(1), (3).

7-14-2523. Term of county road and bridge bonds. (1) Bonds issued under 7-14-2522(1) may not be issued for a longer term than 20 years.

(2) A bond issued under 7-14-2522(1)(b) may not be issued for a term longer than 10 years, except that:

(a) if the unexpired term of the bonds to be refunded is greater than 10 years, the refunding bonds may be issued for the unexpired term; or

(b) if the 10-year term requires an annual tax levy for payment of the refunding bonds which exceeds 10 mills on all property subject to taxation, the term may be so extended as to reduce the annual levy to 10 mills.

History: En. Sec. 7-305, Ch. 197, L. 1965; amd. Sec. 30, Ch. 234, L. 1971; amd. Sec. 125, Ch. 316, L. 1974; R.C.M. 1947, 32-3805(1), (2).

7-14-2524. Limitation on amount of bonds issued — excess void. (1) Except as otherwise provided in 7-7-2203, 7-7-2204, and this section, a county may not issue bonds that, with all outstanding bonds and warrants except county high school bonds and emergency bonds, will exceed 11.25% of the total of the taxable value of the property in the county, plus the value provided by the department of revenue under 15-36-324(10). The taxable property and the amount of taxes levied on new production, production from horizontally completed wells, and incremental production must be ascertained by the last assessment for state and county taxes prior to the issuance of the bonds.

(2) A county may issue bonds that, with all outstanding bonds and warrants except county high school bonds, will exceed 11.25% but will not exceed 22.5% of the total of the taxable value of the property, plus the value provided by the department of revenue under 15-36-324(10) when necessary for the purpose of replacing, rebuilding, or repairing county buildings, bridges, or highways that have been destroyed or damaged by an act of God or by a disaster, catastrophe, or accident.

(3) The value of the bonds issued and all other outstanding indebtedness of the county, except county high school bonds, may not exceed 22.5% of the total of the taxable value of the property within the county, plus the value provided by the department of revenue under 15-36-324(10), as ascertained by the last preceding general assessment.

History: (1), (2)En. Sec. 7-304, Ch. 197, L. 1965; amd. Sec. 15, Ch. 100, L. 1973; amd. Sec. 13, Ch. 391, L. 1973; Sec. 32-3804, R.C.M. 1947; (3)En. Sec. 7-301, Ch. 197, L. 1965; Sec. 32-3801, R.C.M. 1947; R.C.M. 1947, 32-3801(2), 32-3804(part); amd. Sec. 2, Ch. 332, L. 1979; amd. Sec. 4, Ch. 617, L. 1979; amd. Sec. 51, Ch. 614, L. 1981; amd. Sec. 8, Ch. 695, L. 1985; amd. Sec. 4, Ch. 655, L. 1987; amd. Sec. 69, Ch. 11, Sp. L. June 1989; amd. Sec. 16, Ch. 10, L. 1993; amd. Sec. 13, Ch. 9, Sp. L. November 1993; amd. Sec. 24, Ch. 451, L. 1995.

Compiler's Comments

1995 Amendment: Chapter 451 in (1), (2), and (3), after "plus the", substituted "value provided by the department of revenue under 15-36-324(10)" for previous formula (see 1995 Session Law for text). Amendment effective January 1, 1996.

Applicability: Section 55, Ch. 451, L. 1995, provided: "(1) [This act] applies to oil and natural gas produced and sold on or after January 1, 1996.

(2) (a) [Sections 21 through 26] [7-1-2111, 7-7-2101, 7-7-2203, 7-14-2524, 7-14-2525, and 7-16-2327] apply to county fiscal years beginning after June 30, 1996.

(b) [Sections 38 through 46] [20-9-104, 20-9-141, 20-9-161, 20-9-331, 20-9-333, 20-9-501, 20-9-507, 20-10-144, and 20-10-146] apply to school fiscal years beginning after June 30, 1996.

(3) (a) An operator is subject to provisions of Title 15, chapter 23, parts 1 and 6; Title 15, chapter 36; Title 15, chapter 38; and Title 82, chapter 11, part 1, as those laws read on December 31, 1995, for all oil and natural gas produced and sold by the operator before January 1, 1996.

(b) Except as provided in subsection (3)(c), the payment, collection, and distribution of taxes on oil and natural gas production occurring before January 1, 1996, must be made according to the provisions of the laws referred to in subsection (3)(a) governing the tax in effect on the last day of the tax period in which the activity, enterprise, or product being taxed was engaged in, took place, or was produced and sold.

(c) [Section 19] [15-36-325] applies to the payment, collection, and distribution of the local government severance tax for oil and natural gas produced and sold after December 31, 1994, and before January 1, 1996.

(d) All taxes collected pursuant to audit or collected after the date the tax is payable under the laws referred to in subsection (3)(a) must be distributed according to the statute governing allocation of the tax in effect on the date when the tax liability was incurred."

7-14-2525. Refunding agreements and refunding bonds authorized. (1) Whenever the total indebtedness of a county exceeds 22.5% of the total of the taxable value of the property therein, plus the value provided by the department of revenue under 15-36-324(10), and the board determines that the county is unable to pay the indebtedness in full, the board may:

(a) negotiate with the bondholders for an agreement whereby the bondholders agree to accept less than the full amount of the bonds and the accrued unpaid interest in satisfaction of the bonds;

(b) enter into the agreement;

(c) issue refunding bonds for the amount agreed upon.

(2) These bonds may be issued in more than one series, and each series may be either amortization or serial bonds.

(3) The plan agreed upon between the board and the bondholders must be embodied in full in the resolution providing for the issuance of the bonds.

History: En. Sec. 7-302, Ch. 197, L. 1965; amd. Sec. 14, Ch. 100, L. 1973; R.C.M. 1947, 32-3802; amd. Sec. 5, Ch. 617, L. 1979; amd. Sec. 52, Ch. 614, L. 1981; amd. Sec. 9, Ch. 695, L. 1985; amd. Sec. 5, Ch. 655, L. 1987; amd. Sec. 70, Ch. 11, Sp. L. June 1989; amd. Sec. 14, Ch. 9, Sp. L. November 1993; amd. Sec. 25, Ch. 451, L. 1995.

Compiler's Comments

1995 Amendment: Chapter 451 in (1), after "plus the", substituted "value provided by the department of revenue under 15-36-324(10)" for previous formula (see 1995 Session Law for text). Amendment effective January 1, 1996.

Applicability: Section 55, Ch. 451, L. 1995, provided: "(1) [This act] applies to oil and natural gas produced and sold on or after January 1, 1996.

(2) (a) [Sections 21 through 26] [7-1-2111, 7-7-2101, 7-7-2203, 7-14-2524, 7-14-2525, and 7-16-2327] apply to county fiscal years beginning after June 30, 1996.

(b) [Sections 38 through 46] [20-9-104, 20-9-141, 20-9-161, 20-9-331, 20-9-333, 20-9-501, 20-9-507, 20-10-144, and 20-10-146] apply to school fiscal years beginning after June 30, 1996.

(3) (a) An operator is subject to provisions of Title 15, chapter 23, parts 1 and 6; Title 15, chapter 36; Title 15, chapter 38; and Title 82, chapter 11, part 1, as those laws read on December 31, 1995, for all oil and natural gas produced and sold by the operator before January 1, 1996.

(b) Except as provided in subsection (3)(c), the payment, collection, and distribution of taxes on oil and natural gas production occurring before January 1, 1996, must be made according to the provisions of the laws referred to in subsection (3)(a) governing the tax in effect on the last day of the tax period in which the activity, enterprise, or product being taxed was engaged in, took place, or was produced and sold.

(c) [Section 19] [15-36-325] applies to the payment, collection, and distribution of the local government severance tax for oil and natural gas produced and sold after December 31, 1994, and before January 1, 1996.

(d) All taxes collected pursuant to audit or collected after the date the tax is payable under the laws referred to in subsection (3)(a) must be distributed according to the statute governing allocation of the tax in effect on the date when the tax liability was incurred."

7-14-2526. Choice of form of bonds. All bonds issued by any county shall be either amortization bonds or serial bonds. Amortization bonds shall be issued in preference to serial bonds.

History: En. Sec. 7-306, Ch. 197, L. 1965; R.C.M. 1947, 32-3806(1).

7-14-2527. Amortization bonds. (1) The term "amortization bonds" means that form of bond on which a part of the principal is required to be paid each time interest becomes due and payable.

(2) The part payment of principal increases with each following installment in the same amount the interest payment decreases so that the combined amount payable on principal and interest is the same on each interest payment date.

(3) However, the final payment may vary in amount from the other payments to the extent resulting from disregarding fractional cents in the other payments.

History: En. Sec. 7-306, Ch. 197, L. 1965; R.C.M. 1947, 32-3806(2).

7-14-2528. Serial bonds. (1) The term "serial bonds" means a bond issue payable in equal annual installments, one installment consisting of one or more bonds becoming due and payable each year.

(2) The amount to be paid and redeemed each year shall be determined by dividing the total amount of the bonds to be issued by the total number of years the issue is to run so that the total amount of principal to be paid each year will be the same.

(3) The amount of installments becoming due and payable the first year or the first and second years may vary from the others to the extent which results from fixing the amounts of each bond of the other installments at $100, $500, or $1,000, as may be determined by the board.

History: En. Sec. 7-306, Ch. 197, L. 1965; R.C.M. 1947, 32-3806(3).

7-14-2529. Payment of interest. Interest shall be payable semiannually.

History: En. Sec. 7-305, Ch. 197, L. 1965; amd. Sec. 30, Ch. 234, L. 1971; amd. Sec. 125, Ch. 316, L. 1974; R.C.M. 1947, 32-3805(4).

7-14-2530. Redemption of bonds authorized. (1) All bonds issued for a term longer than 5 years shall be redeemable, at the option of the county, 5 years after the date of issue and on any payment due date thereafter before maturity.

(2) This statement shall appear on the face of each bond.

History: En. Sec. 7-305, Ch. 197, L. 1965; amd. Sec. 30, Ch. 234, L. 1971; amd. Sec. 125, Ch. 316, L. 1974; R.C.M. 1947, 32-3805(3).

7-14-2531. Definition of term "single purpose". (1) It shall be deemed a single purpose to:

(a) acquire a right-of-way for and construct a public highway, including any bridge or bridges thereon;

(b) contribute to the cost of a federal-aid bridge;

(c) contribute to the cost of a federal-aid highway project on a highway leading to a federal-aid bridge.

(2) Construction of two or more bridges not forming a part of the same public highway shall be deemed separate purposes.

History: En. Sec. 7-303, Ch. 197, L. 1965; R.C.M. 1947, 32-3803; amd. Sec. 12, Ch. 220, L. 1985.

Part 26

Establishment, Alteration, and Abandonment of County Roads

Part Cross-References

Costs of discontinuation, 7-14-104.

7-14-2601. Petition to establish, alter, or abandon a county road. (1) Any 10, or a majority, of the freeholders of a road district taxable therein for road purposes may petition the board in writing to open, establish, construct, change, abandon, or discontinue any county road in the district.

(2) When the road petitioned for is on the dividing line between two counties, the same procedure must be followed except that a copy of the petition must be presented to each board. The two boards shall act jointly.

(3) As used in this part, unless the context requires otherwise:

(a) "board" means the board of county commissioners;

(b) "abandonment" means cessation of use of right-of-way (easement) or activity thereon with no intention to reclaim or use again and is sometimes called "vacation".

History: (1), (2)En. Sec. 8-202, Ch. 197, L. 1965; Sec. 32-4002, R.C.M. 1947; (3)En. Sec. 2-101, Ch. 197, L. 1965; amd. Sec. 69, Ch. 316, L. 1974; Sec. 32-2203, R.C.M. 1947; R.C.M. 1947, 32-2203(part), 32-4002(part).

7-14-2602. Contents of petition. The petition must set forth:

(1) the particular road or roads to be opened, established, constructed, changed, abandoned, or discontinued;

(2) the general route thereof;

(3) the lands and owners affected;

(4) whether the owners who can be found consent thereto;

(5) where consent is not given, the probable cost of the right-of-way;

(6) the necessity for and advantage of the petitioned action.

History: En. Sec. 8-203, Ch. 197, L. 1965; R.C.M. 1947, 32-4003.

7-14-2603. Investigation of request concerning road — decision. (1) At its next regular or special meeting or in any case at a date within 30 days after filing of any petition, the board shall cause an investigation to be made of the feasibility, desirability, and cost of granting the prayer of the petition. The investigation shall be sufficient to properly determine the merits or demerits of the petition.

(2) No more than one member of the board and the county surveyor shall make the investigation.

(3) After considering the petition and the results of the investigation, the board shall make an entry of its decision on the minutes.

History: En. Sec. 8-204, Ch. 197, L. 1965; R.C.M. 1947, 32-4004(1), (2).

7-14-2604. Notice of decision on petition. Within 10 days thereafter, the board shall cause notice of its decision to be sent by certified mail to all owners of land abutting on the road petitioned for. The owners shall be those listed on the last county assessment roll.

History: En. Sec. 8-204, Ch. 197, L. 1965; R.C.M. 1947, 32-4004(3).

7-14-2605. Opening of county road. If the petition is for the opening of a county road and the board grants the prayer ordering the road opened, it shall proceed at once to have it opened to the public and declare it to be a county road.

History: En. Sec. 8-205, Ch. 197, L. 1965; R.C.M. 1947, 32-4005(part).

7-14-2606. Survey of road. (1) The board may order the county surveyor, or some other competent surveyor if the county surveyor is incompetent, to survey and plat the road. He shall file his field notes with the county clerk and recorder.

(2) The surveyor shall receive $7 per day and actual traveling expenses.

History: En. Sec. 8-205, Ch. 197, L. 1965; R.C.M. 1947, 32-4005(part).

7-14-2607. Damages resulting from establishment or alteration of road. (1) Whenever the board makes an order establishing or changing any road, it must find the amount of damages sustained by each owner or claimant of lands or improvements thereon affected by the road. Damages must be determined by estimating the benefits and damages accruing. The sum estimated as benefits must be deducted from the sum estimated as damages, and the remainder, if any, shall be the amount of damages awarded.

(2) Damages shall be paid to the owner or claimant, if known, upon his showing or establishing his right or title to the lands or improvements and furnishing proper deeds and releases.

History: **En. Sec. 8-206, Ch. 197, L. 1965; R.C.M. 1947, 32-4006(1), (2).**

7-14-2608. Effect of acceptance or rejection of award of damages. (1) If all awards are accepted, the board shall declare the road a county road and open it.

(2) (a) If any award of damages provided for in 7-14-2607 is not accepted within 20 days after the date of the award, it shall be deemed rejected by the owner.

(b) The board shall by order direct that proceedings to procure the right-of-way be instituted under Title 70, chapter 30 by the county attorney against all nonaccepting landowners.

(c) In such proceedings it shall be made to appear that the board shall have declared by resolution that the right-of-way was necessary and desirable.

History: **(1)En. Sec. 8-206, Ch. 197, L. 1965; Sec. 32-4006, R.C.M. 1947; (2)En. Sec. 8-207, Ch. 197, L. 1965; Sec. 32-4007, R.C.M. 1947; R.C.M. 1947, 32-4006(3), 32-4007(1), (3).**

7-14-2609. Effect of failure to give notice. The proceedings provided for in 7-14-2608 shall in no way be affected or invalidated by the failure of the board to give any notice or do any act provided for in this part. Failure to give any such notice shall not be considered by any court as a defense in any proceedings for procuring right-of-way.

History: **En. Sec. 8-207, Ch. 197, L. 1965; R.C.M. 1947, 32-4007(2).**

7-14-2610. Payment of damages and expenses. All awards of damages estimated by the board or made by the proper court and all expenses, including those of the members of the board and their per diem authorized by 7-4-2107 and 7-4-2108, shall be paid out of the county road fund on the order of the board.

History: **En. Sec. 8-208, Ch. 197, L. 1965; R.C.M. 1947, 32-4008.**

7-14-2611. Alteration of road to follow subdivision or section lines. (1) A majority of the freeholders or owners residing on any county road or portion thereof may petition the board in writing to so change the road or portion as to run on subdivision or section lines.

(2) The board shall investigate in the same manner as provided in 7-14-2603. After investigation, the board may order the making of the change if it can be done without material damage, injury, or serious inconvenience to the public customarily using the road or portion.

(3) Those petitioning for the change shall bear all or such portion of the cost and expense of making it as the board may order.

History: **En. Sec. 8-209, Ch. 197, L. 1965; R.C.M. 1947, 32-4009.**

7-14-2612. Crossing of railroad, canal, or ditch by county road — costs. (1) Whenever any county road is laid out on public lands across any railroad, canal, or ditch, the owners or users thereof must at their expense so prepare the railroad, canal, or ditch that the road may cross it without damage or delay.

(2) When the right to cross is obtained through the judgment of any court, no damages shall be awarded.

History: **En. Sec. 8-213, Ch. 197, L. 1965; R.C.M. 1947, 32-4013.**

7-14-2613. Notice to district supervisor of opening or alteration of county road. When a county road is to be opened, established, constructed, changed, abandoned, or discontinued, the county clerk shall notify the supervisor of the proper district and furnish him with a certified copy of the order of the board.

History: **En. Sec. 8-210, Ch. 197, L. 1965; R.C.M. 1947, 32-4010.**

7-14-2614. Record of road opening or alteration to be maintained. When a county road is opened or changed, the findings of the board, the plat field notes, and the report of the surveyor shall be recorded in the office of the county clerk in a book kept for that purpose.

History: **En. Sec. 8-211, Ch. 197, L. 1965; R.C.M. 1947, 32-4011.**

7-14-2615. Abandonment or vacation of county roads. (1) All county roads once established must continue to be county roads until abandoned or vacated by:

(a) operation of law;

(b) judgment of a court of competent jurisdiction; or

(c) the order of the board.

(2) No order to abandon any county road shall be valid unless preceded by notice and public hearing.

History: **En. Sec. 8-214, Ch. 197, L. 1965; R.C.M. 1947, 32-4014.**

7-14-2616. Procedure to discontinue street. (1) The county commissioners may discontinue a street or alley or any part thereof in an unincorporated town or townsite upon the petition in writing of all owners of lots on the street or alley if it can be done without detriment to the public interest.

(2) Where the street or alley is to be closed for school purposes, a petition signed by 75% of the lot owners on the whole street or alley to be closed will be required.

(3) Before acting upon such petition, a notice must be published or posted in three public places, stating when such petition will be acted on and what street or alley or part thereof is asked to be vacated. Such notice must be published in a newspaper or posted at least 1 week before the petition is acted on.

History: **(1), (2)En. Sec. 429, 5th Div. Comp. Stat. 1887; amd. Sec. 5030, Pol. C. 1895; re-en. Sec. 3479, Rev. C. 1907; re-en. Sec. 5306, R.C.M. 1921; amd. Sec. 1, Ch. 13, L. 1929; re-en. Sec. 5306, R.C.M. 1935; amd. Sec. 1, Ch. 1, L. 1941; amd. Sec. 1, Ch. 36, L. 1945; Sec. 11-2801, R.C.M. 1947; (3)En. Sec. 429, 5th Div. Comp. Stat. 1887; amd. Sec. 5031, Pol. C. 1895; re-en. Sec. 3480, Rev. C. 1907; re-en. Sec. 5307, R.C.M. 1921; re-en. Sec. 5307, R.C.M. 1935; Sec. 11-2802, R.C.M. 1947; R.C.M. 1947, 11-2801(part), 11-2802.**

Cross-References

Vacation of plats, 76-3-305.

7-14-2617. Discontinuance of street not to affect utility easements. The vacation authorized by 7-14-2616 shall not affect the right of any public utility to continue to maintain its plant and equipment in any such street or alley.

History: **En. Sec. 429, 5th Div. Comp. Stat. 1887; amd. Sec. 5030, Pol. C. 1895; re-en. Sec. 3479, Rev. C. 1907; re-en. Sec. 5306, R.C.M. 1921; amd. Sec. 1, Ch. 13, L. 1929; re-en.**

Sec. 5306, R.C.M. 1935; amd. Sec. 1, Ch. 1, L. 1941; amd. Sec. 1, Ch. 36, L. 1945; R.C.M. 1947, 11-2801(part).

Cross-References

Vacation of plats — utility easements, 76-3-305.

7-14-2618 through 7-14-2620 reserved.

7-14-2621. Establishment and alteration of stock lanes. (1) A stock lane is a county road established and maintained for the driving and travel of livestock. It shall be not less than 60 feet wide. The width shall be determined by the board in the order creating it.

(2) Upon presentation of a proper petition, each board may establish, alter, or vacate stock lanes when it deems it expedient and necessary for the convenience of the public and for the convenience of travel on roads now established. Any lane may adjoin and parallel a county road and shall be described in the petition for creation and in the order of the board creating it.

(3) The provisions of this part and the general laws relating to establishing, altering, and vacating county roads, including the exercise of the right of eminent domain, shall apply to stock lanes. References in all petitions, orders, and proceedings shall be to stock lanes in order to differentiate them from other highways.

History: En. Sec. 8-215, Ch. 197, L. 1965; R.C.M. 1947, 32-4015.

Part 27

Local Improvement Districts

7-14-2701. Development of county roads. (1) Upon proper petition, as provided for in 7-14-2702, the board may cause county roads to be laid out, opened, constructed, and improved.

(2) As used in this part, unless the context requires otherwise, "board" means the board of county commissioners.

History: (1)En. Sec. 5-401, Ch. 197, L. 1965; Sec. 32-3101, R.C.M. 1947; (2)En. Sec. 2-101, Ch. 197, L. 1965; amd. Sec. 69, Ch. 316, L. 1974; Sec. 32-2203, R.C.M. 1947; R.C.M. 1947, 32-2203(part), 32-3101(1); amd. Sec. 1, Ch. 42, L. 1993.

7-14-2702. Petition for opening or improving road. (1) A petition for laying out, opening, constructing, or improving a county road may be presented to the board by the owners of two-thirds of the lineal feet of land fronting on the proposed or existing road or by two-thirds of the residents of the proposed district. If any land is in the name of a deceased person or a person for whom a guardian has been appointed, the signature of the executor, administrator, or guardian is equivalent to the signature of the owner.

(2) The petition must set forth:

(a) that the petitioners are qualified to sign the petition and that they desire the petitioned action;

(b) the kind and nature of the improvement desired;

(c) the mode of payment of the assessments to be levied for defraying the cost thereof, whether immediate payment or by payment in installments;

(d) the portion of the costs which the district, if formed, will assume and pay.

History: **En. Secs. 5-402, 5-418, Ch. 197, L. 1965; R.C.M. 1947, 32-3102(part), 32-3118(part); amd. Sec. 4, Ch. 253, L. 1979.**

7-14-2703. Proportion of costs to be borne by local improvement district. The portion of the costs which the district will assume and pay must not be less than 35% of the costs and may be as much as 75% thereof.

History: **En. Sec. 5-402, Ch. 197, L. 1965; R.C.M. 1947, 32-3102(part).**

7-14-2704. Resolution of public interest. (1) Upon receipt of the petition, the board may pass a resolution that the public interest demands the laying out, opening, constructing, or improving of the road or part of the road described in the resolution.

(2) The description may not include a portion of a road within the boundaries of a city or incorporated town.

History: **En. Sec. 5-403, Ch. 197, L. 1965; R.C.M. 1947, 32-3103; amd. Sec. 2, Ch. 42, L. 1993.**

7-14-2705. Meeting between county road superintendent, residents, and owners of land. (1) After receipt of the petition and passage of the resolution, the board shall make an order fixing a time and place in the vicinity of the road for a meeting between the county road superintendent or his deputy, all owners upon whose lands special assessments will be levied, and all residents within the proposed district.

(2) All owners of land fronting on the road or land within 2 miles on either side of it upon which special assessments will be levied and all residents within the proposed district may meet with the superintendent or his duly appointed deputy.

History: **En. Secs. 5-404, 5-405, Ch. 197, L. 1965; R.C.M. 1947, 32-3104(1), 32-3105(1); amd. Sec. 5, Ch. 253, L. 1979.**

7-14-2706. Notice of meeting. The county clerk shall immediately notify the county road superintendent of the meeting and shall cause a notice thereof to be published as provided in 7-1-2121. The notice shall state in general terms the kind of construction or improvement sought and the place of beginning, intermediate points, and termination.

History: **En. Sec. 5-404, Ch. 197, L. 1965; R.C.M. 1947, 32-3104(2), (3); amd. Sec. 24, Ch. 349, L. 1985.**

7-14-2707. Meeting procedure — election of committee of supervisors. (1) The superintendent or his deputy, or in their absence one of the landowners or residents present, shall preside. Those present shall elect three as a committee of supervisors; at least one of them shall be a petitioner.

(2) A majority of the owners and residents present and voting shall be sufficient for election. The presiding officer shall certify to the board the names of the owners elected to the committee.

(3) Those elected shall qualify immediately by taking an oath that they are owners of land benefited by the improvements and to be included within the local improvement district or residents within the proposed district. They shall take an oath that they will fully, impartially, and faithfully perform their duties as supervisors. The superintendent or his deputy may administer the oath, or it may be administered by anyone so authorized by law.

History: **En. Sec. 5-405, Ch. 197, L. 1965; R.C.M. 1947, 32-3105(2) thru (4); amd. Sec. 6, Ch. 253, L. 1979.**

7-14-2708. Investigation of proposed road — obtaining releases for damages. The committee and the surveyor or his deputy shall:

(1) immediately view, examine, and survey the road petitioned for;

(2) examine and determine the lands which will be specially benefited by the road and which should be included within the district that is to be assessed;

(3) ascertain whether any damage or injury to property will be sustained by or in consequence of the making of the road; and

(a) obtain, if possible without cost, the release in writing of each person of his claim for such damage or injury; or

(b) arrange, when necessary, for a release to be given for such amount as may be fair and reasonable.

History: En. Sec. 5-406, Ch. 197, L. 1965; R.C.M. 1947, 32-3106(1).

7-14-2709. Preparation and presentation of plans, estimates, and report. (1) The road superintendent shall without delay prepare plans and specifications and cost estimates. He shall prepare a plat and description of the local assessment district and a description of the parcels of land included in the district. The valuation of the lands shall be that which appears on the last annual assessment roll of the county for the levying of general taxes.

(2) At the next annual meeting of the board after the road superintendent has completed surveying the road and making estimates, he shall make a detailed report. The report shall state that the maps, descriptions, plans, specifications, and details and estimates of damages, costs, and expenses have been completed.

History: (1)En. Sec. 5-406, Ch. 197, L. 1965; Sec. 32-3106, R.C.M. 1947; (2)En. Sec. 5-407, Ch. 197, L. 1965; amd. Sec. 41, Ch. 566, L. 1977; Sec. 32-3107, R.C.M. 1947; R.C.M. 1947, 32-3106(2), 32-3107(1).

7-14-2710. Creation of local improvement district. (1) If the whole amount of damages, costs, and expenses does not exceed 135% of the total taxable value of the parcels of land in the district as determined from the last annual assessment roll of the county, the board may make and enter upon the report an order that the road be made.

(2) That order creates the local improvement district, to be known and designated as "local improvement district No. .... in ..... County, Montana".

(3) Copies of the report must be kept in the offices of the board and road superintendent.

History: En. Sec. 5-407, Ch. 197, L. 1965; amd. Sec. 41, Ch. 566, L. 1977; R.C.M. 1947, 32-3107(2), (3); amd. Sec. 3, Ch. 42, L. 1993.

7-14-2711. Division of local improvement district into parts. (1) The boundaries of assessment districts within a local improvement district are as follows:

(a) The lands extending from the center of the road one-half mile on each side thereof (measuring 1 mile in width) constitute Part One of the district.

(b) The lands embraced within an area 1 mile wide on each side of Part One constitute Part Two of the district.

(c) The lands embraced within an area 1 mile wide on either side of Part Two constitute Part Three of the district.

(2) Each of the parts extends the full length of the proposed road and 1 mile beyond the terminus unless the committee otherwise provides.

History: **En. Sec. 5-410, Ch. 197, L. 1965; R.C.M. 1947, 32-3110; amd. Sec. 7, Ch. 253, L. 1979.**

Cross-References

Proportional assessment, 7-14-2734.

7-14-2712. Inspector of works — compensation. (1) The committee and road superintendent together shall appoint some suitable and competent person other than they to act as an inspector of the work. He shall be upon the work at all times during its progress and inspect the performance thereof. He shall report to and be under the supervision of the superintendent.

(2) He shall be paid for his services as inspector at the rate of $5 per day for the time he is actually engaged thereon.

History: **En. Sec. 5-413, Ch. 197, L. 1965; R.C.M. 1947, 32-3113(1), (2).**

7-14-2713. Compensation of committee of supervisors. Each supervisor shall be paid the sum of $3 per day for the time the committee is actually engaged in meeting and acting with the superintendent and in transacting the business of the district. No mileage or other expense money shall be paid.

History: **En. Sec. 5-413, Ch. 197, L. 1965; R.C.M. 1947, 32-3113(3).**

7-14-2714. County authorized to carry out construction or improvement project. (1) Roads in districts may be constructed and improved in the first instance at the entire expense of the county, and the county may, as far as practicable, take the place of a private contractor.

(2) If bids for construction and improvement are rejected by the committee, the district may contract with the board to construct or improve the road.

(3) When the county has paid for construction and improvements, it shall be recompensed by the district in accordance with their agreement. If bonds were issued under the installment plan, they shall become the property of the county.

(4) The county shall have the same lien as if the contract had been let to a private contractor.

History: **En. Sec. 5-414, Ch. 197, L. 1965; R.C.M. 1947, 32-3114.**

7-14-2715. Work contracts with local improvement districts. (1) After the board has made the order creating and establishing the local improvement district, the local committee of supervisors shall advertise for bids. The advertisement shall state generally the work to be done and shall refer to the plans and specifications. It shall also fix the time for opening bids in the office of the board. Each bidder shall meet the requirements of Title 18, chapter 1, part 2.

(2) At that time, the committee shall open all bids. It may reject all of them and readvertise for bids. No contract shall be awarded at a greater sum than the estimate of cost provided for in this part.

History: **En. Sec. 9-205, Ch. 197, L. 1965; R.C.M. 1947, 32-4205.**

7-14-2716. Award of contract by local improvement district. (1) If the committee awards a contract, it shall do so in accordance with the requirements of 18-1-102, 18-1-112, and Title 18, chapter 2, part 4. When there is no prevailing rate of wages set by collective bargaining, the committee shall determine the prevailing rate to be stated in the contract.

(2) Partial payments may be provided for in the contract and paid when certified by the county surveyor and committee.

History: **En. Sec. 9-206, Ch. 197, L. 1965; R.C.M. 1947, 32-4206(1), (3).**

7-14-2717. Performance bond to be given by successful bidder. Before entering upon performance of the contract, the contractor shall comply with the requirements of Title 18, chapter 2, part 2. For the purposes of those sections with relation to contracts with the committee, a contract shall not be completed until the committee, while formally convened, affirmatively accepts all of the work thereunder.

History: **En. Sec. 9-206, Ch. 197, L. 1965; R.C.M. 1947, 32-4206(2).**

7-14-2718. Local improvement district contracts to be executed by board of county commissioners. The contract shall be executed in the name and on behalf of the county by the board and attested with the county seal for the use and benefit of the local improvement district. The county shall not be subject to any claim or liability in an amount greater than that agreed upon with the district in the order fixing the amount chargeable to the county.

History: **En. Sec. 9-207, Ch. 197, L. 1965; R.C.M. 1947, 32-4207.**

7-14-2719. Procedure for payment of claims. (1) The committee shall approve and certify all claims and accounts for services and every kind of expense payable from funds of the district.

(2) The county auditor, or the county clerk in any county which has no auditor, shall then audit all such claims and accounts. Thereafter he shall issue to the treasurer an order in favor of the person to whom the claim or account is payable to pay it.

(3) Upon presentation of the order by the person to whom it was issued or his assignee, the treasurer shall pay it from the funds of the district.

History: **En. Sec. 5-429, Ch. 197, L. 1965; R.C.M. 1947, 32-3129.**

7-14-2720. Payments while work in progress. (1) The surveyor with the approval of the committee, shall make estimates of the proportion of the work completed. After auditing, the estimates may be paid by the treasurer, to an amount not exceeding 80%, during the progress of the work.

(2) If the assessment is payable by installments, the treasurer shall pay the order only from such assessments as shall have been collected prior to the issue of the bonds and from the proceeds of the sales of the bonds after issue.

(3) If the board has ordered that the contractor shall receive bonds in payment, the order for payment shall call for bonds instead of money. The treasurer shall deliver the bonds, dating them the day he delivers them to the contractor, and interest shall run therefrom.

History: **En. Sec. 5-430, Ch. 197, L. 1965; R.C.M. 1947, 32-3130(1) thru (3).**

7-14-2721. Disposition of excess funds after full payment for road. (1) After the payment of the whole cost of construction or improvement, any money remaining in the county treasury which belongs to the district shall be refunded on demand. A rebate therefrom shall be made on demand to any person who shall not have paid his assessment in full.

(2) Demand shall be made within 2 years from the date upon which the assessment became due.

(3) Any such money remaining in the county treasury after the expiration of 2 years for which no demand has been made, shall go into the general fund.

History: **En. Sec. 5-431, Ch. 197, L. 1965; R.C.M. 1947, 32-3131.**

7-14-2722 through 7-14-2730 reserved.

7-14-2731. Assessment and lien upon lands benefited by road. (1) The board shall levy and cause to be collected an assessment upon all parcels of land specifically benefited by the laying out, opening, construction, or improvement, for paying the costs thereof.

(2) The assessment shall be a first lien upon the liable land, prior and superior to all other liens and encumbrances.

History: En. Sec. 5-401, Ch. 197, L. 1965; R.C.M. 1947, 32-3101(2), (3).

Cross-References

Liens, Title 71, ch. 3, part 1.

7-14-2732. Payment of assessments — bond issue. (1) The board shall provide for the payment of assessments either on the immediate payment plan or by installments.

(2) The board shall issue local improvement district bonds and coupons for each installment.

History: En. Sec. 5-401, Ch. 197, L. 1965; R.C.M. 1947, 32-3101(4), (5).

7-14-2733. Sharing of road costs with county. (1) The board may enter an agreement to share costs with the district when the petition presented states the proportion which the district will pay. After such an agreement has been made specifying the amount to be paid by the district and the amount to be paid from county funds, the board shall make an order to that effect on the records of its proceedings.

(2) The board shall order paid from county funds the share of the county for construction or improvement of the road. However, payment shall not exceed 65% of the cost. This amount shall be a proper charge against the county and shall be paid by the treasurer upon warrants, duly drawn, as ordered by the board.

History: (1)En. Sec. 5-408, Ch. 197, L. 1965; Sec. 32-3108, R.C.M. 1947; (2)En. Sec. 5-409, Ch. 197, L. 1965; Sec. 32-3109, R.C.M. 1947; R.C.M. 1947, 32-3108, 32-3109.

7-14-2734. Assessments to be allocated between parts of district. (1) Each separate parcel of land in Part One shall be assessed for its proportion of 45% of the whole cost payable by the district.

(2) Each separate parcel of land in Part Two shall be assessed for its proportion of 35% of the cost.

(3) Each separate parcel of land in Part Three shall be assessed for its proportion of 20% of the cost.

History: En. Sec. 5-411, Ch. 197, L. 1965; R.C.M. 1947, 32-3111(1) thru (3).

Cross-References

Division of local improvement district into parts, 7-14-2711.

7-14-2735. Lien arising from assessments. (1) All of the lands in each part are subject to a lien for all of the assessments of that part until they have been paid.

(2) The assessment is a first lien on the land described in the assessment register.

History: (1)En. Sec. 5-411, Ch. 197, L. 1965; Sec. 32-3111, R.C.M. 1947; (2)En. Sec. 5-417, Ch. 197, L. 1954; Sec. 32-3117, R.C.M. 1947; R.C.M. 1947, 32-3111(4), 32-3117(3); amd. Sec. 23, Ch. 27, Sp. L. November 1993.

Cross-References

Liens, Title 71, ch. 3, part 1.

7-14-2736. Determination of assessment. The assessments upon the parcels of land in each part shall be made ratably according to the front-foot plan as follows:

(1) The unit used to determine the proportion of assessment shall be 1 foot of longitude measured along the road constituting the center of the district and extending latitudinally across the part.

(2) Because units in each part may not be equal, assessment rates for each part shall be determined for 880 square feet of surface.

History: En. Sec. 5-412, Ch. 197, L. 1965; R.C.M. 1947, 32-3112(1).

7-14-2737. Adjustment of assessment rates due to unequal areas in parts. If the areas of the parts are not equal, the rates fixed for parts one, two, and three shall be related to each other as are the numbers 45, 35, and 20, respectively.

History: En. Sec. 5-412, Ch. 197, L. 1965; R.C.M. 1947, 32-3112(2).

7-14-2738. Preparation of assessment register. (1) When the order for improvement and construction has been made by the board, the committee and the department of revenue shall apportion the estimated cost and expenses to the land in the district.

(2) Within 30 days before the letting of the contract, the department shall report to and file with the board and the treasurer an assessment register in duplicate. It must contain the description of each parcel of land to be assessed, the amount to be assessed against it, and the name of the owner, if known.

History: En. Sec. 5-415, Ch. 197, L. 1965; R.C.M. 1947, 32-3115(part); amd. Sec. 24, Ch. 27, Sp. L. November 1993.

7-14-2739. Notice of preparation of assessment register. As soon as the assessment register is reported and filed, the board shall publish notice as provided in 7-1-2121. The notice must notify all persons interested that the assessment register has been filed and require them to appear at the office of the board at the county seat at a time not less than 15 days from the date of the last publication of the notice to make objections.

History: En. Sec. 5-416, Ch. 197, L. 1965; R.C.M. 1947, 32-3116(1); amd. Sec. 25, Ch. 349, L. 1985; amd. Sec. 25, Ch. 27, Sp. L. November 1993.

7-14-2740. Hearing on assessment register. At the time fixed, the board shall meet. If no objections have been filed, the board shall make an order confirming the assessment register. If written objections, properly verified, have been filed, the board shall hear the objections, receiving testimony from any party involved.

History: En. Sec. 5-416, Ch. 197, L. 1965; R.C.M. 1947, 32-3116(2); amd. Sec. 26, Ch. 27, Sp. L. November 1993.

7-14-2741. Effect of error in name of owner. In no case shall a mistake in the name of the owner be fatal to the assessment when the description of the land is correct.

History: En. Sec. 5-415, Ch. 197, L. 1965; R.C.M. 1947, 32-3115(part).

7-14-2742. Correction of errors — approval of assessment register. (1) After the hearing, the board shall make any corrections as appear just to apportion the assessment to the benefit to be received.

(2) The board shall then make and enter an order approving and certifying the assessment register.

History: En. Sec. 5-417, Ch. 197, L. 1954; R.C.M. 1947, 32-3117(1); amd. Sec. 27, Ch. 27, Sp. L. November 1993.

7-14-2743. Levy of assessments. With the aid of the department of revenue, the board shall levy and assess the amounts on the assessment register against the parcels of land or parts of parcels. The department shall enter in the property tax record the amounts levied and assessed.

History: En. Sec. 5-417, Ch. 197, L. 1954; R.C.M. 1947, 32-3117(2); amd. Sec. 28, Ch. 27, Sp. L. November 1993.

7-14-2744. Mode of payment of assessment — immediate payment. (1) If immediate payment is chosen, the board shall deliver the assessment register to the county clerk as soon as it has been proved and certified. The clerk shall file a duplicate in the clerk's office and immediately deliver the other to the treasurer.

(2) The treasurer shall publish a notice for 2 consecutive weeks in the newspapers in which the notice for bids was advertised and shall mail a copy of the notice to the owners of the land assessed, when the name and post-office address of the owner are known.

(3) Failure to mail notice is not fatal to the assessment when it has been published.

(4) The notice must state the following:

(a) The assessment register has been certified to the treasurer for collection.

(b) Unless payment is made within 30 days from the date of the notice, the payment will become delinquent and bears interest at the rate of 10% per annum.

(c) If the assessment is not paid before it becomes delinquent, a penalty of 5% must be added, as well as the interest on the annual tax roll for the current year.

(d) The interest and penalty must be collected together with the additional charges as are authorized to be charged and collected on other delinquent taxes.

(e) The land assessed must be sold for the amount of the assessment with interest, penalty, and costs, in the manner and with the same authority as lands are sold for general taxes.

History: (1) thru (3)En. Sec. 5-419, Ch. 197, L. 1965; Sec. 32-3119, R.C.M. 1947; (4)En. Sec. 5-420, Ch. 197, L. 1965; Sec. 32-3120, R.C.M. 1947; R.C.M. 1947, 32-3119, 32-3120; amd. Sec. 29, Ch. 27, Sp. L. November 1993.

7-14-2745. Mode of payment of assessment — installment payments. (1) Installment payments must be made in six equal portions, in 1, 2, 3, 4, 5, and 6 years.

(2) Payments must be in the form of bonds that draw interest, not to exceed the limitations of 17-5-102, per annum from the date they are issued until they are paid.

(3) If the mode of payment is to be by installments, the board and the committee shall approve and certify the assessment register.

(4) The board shall, at the time of levying the assessment and in the order setting the levy, declare that the sum charged against each parcel of land may be paid in equal annual installments with interest upon the whole sum at the

rate fixed by the board of county commissioners in accordance with law. The order must specify the number of installments, which must be equal to the number of years for which the bonds may run.

(5) Each year, the treasurer shall collect one of the installments, together with the interest due on that installment and the interest due on the future installments.

(6) Provisions concerning delinquency and the sale of land set forth with relation to the mode of immediate payment are applicable to installment payments.

History: (1), (2)En. Sec. 5-418, Ch. 197, L. 1965; Sec. 32-3118, R.C.M. 1947; (3) thru (6)En. Sec. 5-421, Ch. 197, L. 1965; amd. Sec. 27, Ch. 234, L. 1971; Sec. 32-3121, R.C.M. 1947; R.C.M. 1947, 32-3118(part), 32-3121; amd. Sec. 6, Ch. 500, L. 1981; amd. Sec. 1, Ch. 11, L. 1983; amd. Sec. 23, Ch. 370, L. 1987; amd. Sec. 30, Ch. 27, Sp. L. November 1993.

7-14-2746. Disposition of amounts collected on installment payments of assessments. Amounts collected on installment payments of assessments shall be reserved and disbursed by the treasurer for the payment of principal and interest and for the redemption of the bonds referred to in 7-14-2720.

History: En. Sec. 5-430, Ch. 197, L. 1965; R.C.M. 1947, 32-3130(4).

7-14-2747 through 7-14-2750 reserved.

7-14-2751. Use of bonds to make payment of costs. When improvement is ordered upon a petition specifying the method of payment of bonds, the board shall provide that the payment of costs and expenses be made under the provisions of this part by bonds charged against the lands in the district. The bonds may be issued to the contractors in payment, or costs may be paid by the proceeds of the bonds to be issued and sold as hereinafter provided. In all other cases, the board may so provide.

History: En. Sec. 5-422, Ch. 197, L. 1965; R.C.M. 1947, 32-3122.

7-14-2752. Order for issuance of bonds. The board shall make and enter an order authorizing and directing the issuance of bonds payable not more than 10 years after the date of issuance.

History: En. Sec. 5-423, Ch. 197, L. 1965; amd. Sec. 28, Ch. 234, L. 1971; R.C.M. 1947, 32-3123(1).

7-14-2753. Details relating to bonds. (1) Each bond shall provide that the holder shall not demand payment until it comes due. It shall bear interest payable annually and shall have interest coupons for each interest payment attached.

(2) Each bond and coupon shall bear the date of issuance and be made payable to bearer. Each bond shall be signed by the chairman of the board and attested by the county clerk. The seal of the board shall be affixed to each bond.

(3) Bonds shall be issued in denominations of not less than $100 or more than $1,000.

(4) Each bond shall contain a reference to the district for which it is issued and to the order and record authorizing the issue. It shall state that it is payable only out of the local improvement funds created by special assessment and not otherwise.

(5) On its face, each bond shall bear the designation of the district: “local improvement district No. .... in .... County, Montana”.

(6) The board may also direct in the order providing for issuance of the bonds that they be sold by the treasurer at not less than par value and accrued interest.

History: (1) thru (5)En. Sec. 5-423, Ch. 197, L. 1965; amd. Sec. 28, Ch. 234, L. 1971; Sec. 32-3123, R.C.M. 1947; (6)En. Sec. 5-426, Ch. 197, L. 1965; Sec. 32-3126, R.C.M. 1947; R.C.M. 1947, 32-3123(2) thru (6), 32-3126(part).

7-14-2754. Limit on amount of bond issue. No bond shall be issued in excess of the costs and expenses of the improvements and construction.

History: En. Sec. 5-423, Ch. 197, L. 1965; amd. Sec. 28, Ch. 234, L. 1971; R.C.M. 1947, 32-3123(7).

7-14-2755. Notice of use of bonds. (1) If the board provides that payment of costs must be made by the issuance of bonds, the treasurer shall publish notice for 2 consecutive weeks and mail a copy of the notice in the same manner as is provided with relation to immediate payment.

(2) The notice must state that:

(a) the assessment register has been certified to the treasurer for collection;

(b) unless payment of the whole amount of the assessment is made within 30 days from the date of the notice, special bonds must be issued against the lands in the district for the payment of the assessment;

(c) if the bonds are issued, they will be payable in annual installments with interest on the bonds at the rate provided in the bonds.

History: En. Sec. 5-424, Ch. 197, L. 1965; R.C.M. 1947, 32-3124; amd. Sec. 31, Ch. 27, Sp. L. November 1993.

7-14-2756. Payment of assessment — release from bond obligations. (1) At any time within 30 days after notice, the owner may pay the assessment and release and discharge his lands therefrom and from the operation and effect of the bonds.

(2) No bonds shall be issued until 20 days after the expiration of 30 days after notice. No bonds shall be issued for any assessment paid in full within the 30 days.

History: En. Sec. 5-425, Ch. 197, L. 1965; R.C.M. 1947, 32-3125(1), (2).

7-14-2757. Redemption of land. The owner of lands may redeem them from all liability for assessment at any time after the 30 days by paying all of the assessment remaining unpaid, together with interest and all charges thereon to the date of maturity of the installment next falling due.

History: En. Sec. 5-425, Ch. 197, L. 1965; R.C.M. 1947, 32-3125(3).

7-14-2758. Payments to be made to treasurer. All payments under the provisions of 7-14-2756 or 7-14-2757 shall be made to the treasurer, who shall apply them solely to the costs of the improvement or construction.

History: En. Sec. 5-425, Ch. 197, L. 1965; R.C.M. 1947, 32-3125(4).

7-14-2759. Issuance of bonds to contractor. Bonds ordered sold by the board may be issued to the contractor constructing the improvement in payment.

History: En. Sec. 5-426, Ch. 197, L. 1965; R.C.M. 1947, 32-3126(part).

7-14-2760. Payment of interest. The treasurer shall pay the interest on the bonds out of the funds of the district collected on assessments for the bonds.

History: **En. Sec. 5-427, Ch. 197, L. 1965; R.C.M. 1947, 32-3127(1).**

7-14-2761. Rights of bondholders. (1) If the treasurer fails, neglects, or refuses to pay bonds or to collect promptly any assessments when due, the owner of any bonds may proceed in his own name to collect the assessments and to foreclose the lien in any court of competent jurisdiction. In addition to the amount of the assessments and interest thereon, any such owner shall recover 5% of the costs of his suit.

(2) Any number of holders of bonds for any single district may join as plaintiffs, and any number of owners of land on which the bonds are a lien may be joined as defendants.

(3) Neither the holder nor any owner of any bond shall have any claim against the county through which the bond is issued except for the assessments. His remedy in case of nonpayment shall be confined to the enforcement of the assessments.

(4) A copy of this section shall be plainly written, printed, or engraved on each bond.

History: **En. Sec. 5-428, Ch. 197, L. 1965; R.C.M. 1947, 32-3128.**

7-14-2762. Disposition of bond proceeds. The proceeds of such bonds shall be applied in payment of the costs and expenses of the improvement.

History: **En. Sec. 5-426, Ch. 197, L. 1965; R.C.M. 1947, 32-3126(part).**

7-14-2763. Retirement of outstanding bonds. (1) Whenever there is money in the fund against which the bonds have been issued over and above the amount sufficient for the payment of interest on all unpaid bonds, it shall be used to pay the principal on one or more of the bonds. The treasurer shall call in and pay the bonds in their numerical order.

(2) The call shall be published in the official county newspaper on the day following the maturity date of the installment of assessment or as soon thereafter as practicable. It shall state that special bonds No. .... (giving the serial number or numbers of the bonds called) of the district will be paid on the day the next interest coupons become due. Interest upon the bonds thus called shall cease upon that date.

History: **En. Sec. 5-427, Ch. 197, L. 1965; R.C.M. 1947, 32-3127(2), (3).**

Part 28

Ferries and Wharves

7-14-2801. General powers of county relating to ferries. The board of county commissioners, under such limitations and restrictions as are prescribed by law, may:

(1) lay out, maintain, control, and manage county ferries within the county and levy taxes therefor as provided by law;

(2) in the exercise of sound discretion, jointly with other counties, lay out, maintain, control, manage, and improve county ferries in adjacent counties, wholly or in such part as may be agreed upon between the boards of the counties concerned, and levy taxes therefor as provided by law.

History: **En. Subd. 4, Sec. 1, Ch. 100, L. 1931; re-en. Sec. 4465.3, R.C.M. 1935; amd. Sec. 12-101, Ch. 197, L. 1965; R.C.M. 1947, 16-1004(part).**

7-14-2802. Construction and operation of ferries uniting two counties. (1) When a public ferry, if constructed, would unite two counties, the boards of county commissioners may act jointly to construct, maintain, and operate it. Each county shall acquire and maintain its own landings and approaches.

(2) When ferrymen are employed on joint ferries, they shall report quarterly to each board, giving such information as each board may require.

History: En. Sec. 5-207, Ch. 197, L. 1965; R.C.M. 1947, 32-2907.

7-14-2803. Establishment and operation of public ferry or wharf upon petition. When it shall be made to appear by petition to any board of county commissioners in this state that it is necessary to keep and maintain a public ferry across or a wharf at any unfordable stream, lake, estuary, or bay, any county within the state, through its board of county commissioners, is hereby authorized to construct or to acquire by condemnation or purchase and to operate, maintain, direct, regulate, and control the operation of a ferry across or a wharf at any unfordable stream, lake, estuary, or bay within or bordering on said county, together with all the necessary boats, grounds, roads, approaches, landings, and improvements pertaining thereto, with full jurisdiction and authority to operate and maintain the same free or for toll.

History: En. Sec. 1, Ch. 33, L. 1909; re-en. Sec. 4477, R.C.M. 1921; re-en. Sec. 4477, R.C.M. 1935; R.C.M. 1947, 16-1116.

7-14-2804. Acquisition of property for public ferries and wharves. (1) Upon the proper showing as provided in 7-14-2803, each board of county commissioners may construct or acquire ferries by condemnation or purchase. Each board may also acquire all the necessary boats, grounds, roads, approaches, landings, and improvements pertaining to the ferry.

(2) Each board may acquire real property for these purposes under the provisions of Title 70, chapter 30.

(3) No board shall establish or maintain a county ferry or wharf with a landing place in any incorporated city or town which by its charter is vested with the power to build and regulate ferries, wharves, or landings at the feet of streets terminating at a river or harbor.

History: En. Sec. 8-217, Ch. 197, L. 1965; R.C.M. 1947, 32-4017.

7-14-2805. Establishment and operation of public ferry or wharf by county upon its own motion. (1) Any county of the state may own and establish and the board of county commissioners of any county of the state may operate and manage free or toll ferries and wharves for the use of the public and may employ one or more ferrymen to operate such free or toll ferries and wharves.

(2) While such ferries or wharves are so owned by any county and operated and managed by such board, such operation shall be and is hereby expressly declared to be a governmental function.

(3) The board may also lease any ferries or wharves owned by such county to a company, firm, or individual to be operated for the use of the public. Said company, firm, or individual shall give bond, in an amount deemed sufficient by the board, conditioned for the careful and business-like operation of such ferry or wharf in accordance with law and the regulations of said board. While

such ferry or wharf is so operated by a lessee of said county, such operation is expressly declared to be the private function of such lessee.

History: En. Sec. 4, Ch. 33, L. 1909; re-en. Sec. 4480, R.C.M. 1921; re-en. Sec. 4480, R.C.M. 1935; amd. Sec. 1, Ch. 38, L. 1943; R.C.M. 1947, 16-1119.

7-14-2806. Rules and rates for public ferry or wharf. (1) The board of county commissioners shall make all needful rules for the government and operation of county ferries, alter and fix rates of toll, and fix the amount of rental when leased to individuals or companies.

(2) In all cases the rate of toll shall be printed in legible form and posted upon the boat and at the landing places.

History: En. Sec. 5, Ch. 33, L. 1909; re-en. Sec. 4481, R.C.M. 1921; re-en. Sec. 4481, R.C.M. 1935; R.C.M. 1947, 16-1120.

Cross-References

Montana Administrative Procedure Act not applicable to local governments, 2-4-102.

7-14-2807. Tax levy for public ferry — combined ferry and bridge fund. (1) If a county owns or operates a public ferry, the board of county commissioners may levy a special tax, not to exceed 2 mills on the dollar, on the taxable property of the county for the purpose of constructing, maintaining, and repairing public ferries.

(2) The board may combine the revenue from the tax authorized in this section with revenues from taxes to support bridges as provided in 7-14-2502.

History: En. Sec. 1, Ch. 53, L. 1959; R.C.M. 1947, 32-1518; amd. Sec. 2, Ch. 36, L. 1989.

7-14-2808 through 7-14-2820 reserved.

7-14-2821. Permission to operate ferry between counties. (1) When authority to erect and keep a ferry over waters dividing two counties is desired, application must be made to the board of commissioners of the county situated on the left bank descending the river, creek, or slough.

(2) The board may not grant authority to erect a toll ferry until the notice of the intended application is given as required in 7-14-2822.

(3) After notice is given, an application must be made in writing, under oath, to the board of the proper county. The applications must contain a description of the proposed ferry landings; the names of the owners, if known, of the proposed landings; and a statement that notice of the application has been served at least 10 days prior to the date of application on those landowners who are not parties to the application.

History: (1)En. Sec. 2820, Pol. C. 1895; re-en Sec. 1457, Rev. C. 1907; re-en. Sec. 1766, R.C.M. 1921; Cal. Pol. C. Sec. 2843; re-en. Sec. 1766, R.C.M. 1935; Sec. 32-1501, R.C.M. 1947; (2)En. Sec. 2821, Pol. C. 1895; re-en. Sec. 1458, Rev. C. 1907; re-en. Sec. 1767, R.C.M. 1921; Cal. Pol. C. Sec. 2844; re-en. Sec. 1767, R.C.M. 1935; amd. Sec. 39, Ch. 136, L. 1974; Sec. 32-1502, R.C.M. 1947; (3)En. Sec. 2822, Pol. C. 1895; re-en. Sec. 1459, Rev. C. 1907; re-en. Sec. 1768, R.C.M. 1921; Cal. Pol. C. Sec. 2892; re-en. Sec. 1768, R.C.M. 1935; Sec. 32-1503, R.C.M. 1947; R.C.M. 1947, 32-1501, 32-1502, 32-1503(part); amd. Sec. 8, Ch. 253, L. 1979.

7-14-2822. Notice of application to operate ferry. Every applicant for authority to erect and take tolls on a public ferry must publish notice, specifying the location and the time when and place where the application will be made:

(1) in at least one newspaper in each county in which the ferry is or touches or, if there is no newspaper published therein, then in one published in an adjoining county; and

(2) by posting three notices in three public places in the township for 4 successive weeks.

History: En. Sec. 2822, Pol. C. 1895; re-en. Sec. 1459, Rev. C. 1907; re-en. Sec. 1768, R.C.M. 1921; Cal. Pol. C. Sec. 2892; re-en. Sec. 1768, R.C.M. 1935; R.C.M. 1947, 32-1503(part).

7-14-2823. Hearing and decision on application. (1) At the hearing, proof of giving the notice required by 7-14-2821 and 7-14-2822 must be made, and any person may appear and contest the application. If the board of commissioners finds that the ferry is either a public necessity or convenience and that the applicant is a suitable person and, by reason of the ownership of the landing or failure of the owner thereof to apply, is entitled thereto, authority to erect and take tolls on the ferry may be granted to him for the term of 10 years. The board may at any time they see fit authorize and maintain fords across any water within any distance of any ferry.

(2) The board granting authority to keep a public ferry must at the same time:

(a) fix the amount of a bond to be given by the person or corporation owning or taking tolls on the ferry for the benefit of the county and all persons crossing or desiring to cross on the same and provide for the annual renewal thereof;

(b) fix the amount of license tax to be paid by the person or corporation for taking tolls thereon, not less than $3 or over $100 per month, payable annually;

(c) fix the rate of tolls which may be collected for crossing on the ferry;

(d) make all necessary orders relative to the construction, erection, and business of ferries which they have by law the power to make.

(3) When a county commissioner is interested in an application to erect, construct, or take tolls on a ferry, he must not act in any such matters.

History: Ap. p. Sec. 2823, Pol. C. 1895; re-en. Sec. 1460, Rev. C. 1907; re-en. Sec. 1769, R.C.M. 1921; Cal. Pol. C. Sec. 2893; re-en. Sec. 1769, R.C.M. 1935; Sec. 32-1504, R.C.M. 1947; Ap. p. Sec. 2824, Pol. C. 1895; re-en. Sec. 1461, Rev. C. 1907; re-en. Sec. 1770, R.C.M. 1921; Cal. Pol. C. Sec. 2845; re-en. Sec. 1770, R.C.M. 1935; Sec. 32-1505, R.C.M. 1947; (3)En. Sec. 2831, Pol. C. 1895; re-en. Sec. 1468, Rev. C. 1907; re-en. Sec. 1777, R.C.M. 1921; Cal. Pol. C. Sec. 2852; re-en. Sec. 1777, R.C.M. 1935; Sec. 32-1512, R.C.M. 1947; R.C.M. 1947, 32-1504, 32-1505, 32-1512; amd. Sec. 13, Ch. 220, L. 1985; amd. Sec. 24, Ch. 370, L. 1987.

7-14-2824. Preference for landowner. The owner of the land on either bank of the waters to be crossed, with the owner of the land on the left bank descending given preference over the owner of the land on the right bank, is entitled to preference in procuring authority to construct a ferry. Whenever the owners of the banks do not apply for such authority within a reasonable time after the necessity therefor arises, the board of commissioners may grant authority to another.

History: En. Sec. 2833, Pol. C. 1895; re-en. Sec. 1470, Rev. C. 1907; re-en. Sec. 1779, R.C.M. 1921; Cal. Pol. C. Sec. 2854; re-en. Sec. 1779, R.C.M. 1935; R.C.M. 1947, 32-1514; amd. Sec. 9, Ch. 253, L. 1979.

7-14-2825. Establishment of new ferry near existing ferry. No toll ferry must be established within 1 mile immediately above or below a regularly established ferry unless the situation of a town or village, the crossing of a public highway, or the intersection of some creek or ravine renders it necessary for public convenience. In addition to the public notice required, notice of intention to apply for authority to erect a toll ferry must be served upon the proprietor of the ferry already established, at least 10 days prior thereto, giving the time and place and grounds of such application.

History: En. Sec. 2832, Pol. C. 1895; re-en. Sec. 1469, Rev. C. 1907; re-en. Sec. 1778, R.C.M. 1921; Cal. Pol. C. Sec. 2853; re-en. Sec. 1778, R.C.M. 1935; R.C.M. 1947, 32-1513.

7-14-2826. Regulation of ferry operation — penalties. (1) The board of commissioners may make all needful rules for the government of ferries and ferrykeepers prescribing:

(a) how many boats must be kept, their character, and how propelled;

(b) the number of hands, boatmen, or ferrymen to be employed and rules for their government;

(c) when and under what circumstances to make trips in the nighttime;

(d) who may be ferried free of toll;

(e) in what cases of danger or peril not to cross;

(f) penalties for violation of regulations;

(g) in case of steamboats, the rate of speed;

(h) the method of and preference in loading and crossing; and

(i) how and by whom action must be brought to recover penalties.

(2) Subject to the foregoing regulations, ferrykeepers must make trips to accommodate all passengers who desire to cross, and any failure to do so subjects the franchise to forfeiture by a proper proceeding for that purpose.

(3) The owner of every ferry must have the rates of toll, as fixed by the board, printed or written and posted in some conspicuous place on or near the ferry.

(4) All ferrykeepers must keep the banks of the streams or waters at the landings of their ferries graded and in good order for the passage of vehicles. For every day compliance herewith is neglected, $25 is forfeited, to be collected, except as provided in 3-10-601, for the use of the road fund of the county.

History: (1)En. Sec. 2826, Pol. C. 1895; re-en. Sec. 1463, Rev. C. 1907; re-en. Sec. 1772, R.C.M. 1921; Cal. Pol. C. Sec. 2894; re-en. Sec. 1772, R.C.M. 1935; Sec. 32-1507, R.C.M. 1947; (2)En. Sec. 2827, Pol. C. 1895; re-en. Sec. 1464, Rev. C. 1907; re-en. Sec. 1773, R.C.M. 1921; re-en. Sec. 1773, R.C.M. 1935; Sec. 32-1508, R.C.M. 1947; (3)En. Sec. 2835, Pol. C. 1895; re-en. Sec. 1472, Rev. C. 1907; re-en. Sec. 1781, R.C.M. 1921; Cal. Pol. C. Sec. 2856; re-en. Sec. 1781, R.C.M. 1935; Sec. 32-1516, R.C.M. 1947; (4)En. Sec. 2836, Pol. C. 1895; re-en. Sec. 1473, Rev. C. 1907; re-en. Sec. 1782, R.C.M. 1921; Cal. Pol. C. Sec. 2858; re-en. Sec. 1782, R.C.M. 1935; Sec. 32-1517, R.C.M. 1947; R.C.M. 1947, 32-1507, 32-1508, 32-1516, 32-1517; amd. Sec. 3, Ch. 557, L. 1987.

Cross-References

Collection and disposition of fines, penalties, forfeitures, and fees collected by a Justice's Court, 3-10-601.

County road fund, 7-14-2513.

7-14-2827. Surety bond required. The bond required of the owner or keeper of the ferry must be in the sum fixed by the board of commissioners, with one or more sureties, and conditioned that the ferry will be kept in good repair and condition and that the keeper will faithfully comply with the laws of the state and all legal orders of the board regulating the same and pay all damages recovered against him by any person injured or damaged by reason of delay at or defect in such ferry or in any manner resulting from a noncompliance with the laws or lawful orders regulating the same. The bond must be approved by the board.

History: En. Sec. 2829, Pol. C. 1895; re-en. Sec. 1466, Rev. C. 1907; re-en. Sec. 1775, R.C.M. 1921; Cal. Pol. C. Sec. 2850; re-en. Sec. 1775, R.C.M. 1935; R.C.M. 1947, 32-1510.

Cross-References

Surety bonds, Title 28, ch. 11, part 4.

7-14-2828. Report required. Every owner or keeper of a ferry must report annually to the board of commissioners from which his license is obtained, under oath, the following facts:

(1) the actual cost of the construction or erection and equipment of the ferry;

(2) the repairs made during the preceding year and the actual cost thereof;

(3) the expense of labor and hire of agents and other costs necessarily incurred in and about the conduct of his business;

(4) the amount of tolls collected; and

(5) the estimated actual cash value of the ferry, exclusive of the franchise.

History: En. Sec. 2825, Pol. C. 1895; re-en. Sec. 1462, Rev. C. 1907; re-en. Sec. 1771, R.C.M. 1921; Cal. Pol. C. Sec. 2847; re-en. Sec. 1771, R.C.M. 1935; R.C.M. 1947, 32-1506.

7-14-2829. Acquisition of land for ferry. When there are lands necessary for the construction, erection, or use of such ferry which cannot be procured by agreement between the owner and the landowner, the right-of-way and all other lands necessary for the use and construction or erection thereof may be acquired by condemnation.

History: En. Sec. 2834, Pol. C. 1895; re-en. Sec. 1471, Rev. C. 1907; re-en. Sec. 1780, R.C.M. 1921; Cal. Pol. C. Sec. 2855; re-en. Sec. 1780, R.C.M. 1935; R.C.M. 1947, 32-1515.

Cross-References

Eminent domain, Title 70, ch. 30.

7-14-2830. Procedure to administer license tax. The license tax for a ferry connecting two counties must be paid to the treasurer of the county granting the license issued, but the treasurer of such county must annually pay to the treasury of the county in which the other end or landing of the ferry is located one-half of the sum so received.

History: En. Sec. 2830, Pol. C. 1895; re-en. Sec. 1467, Rev. C. 1907; re-en. Sec. 1776, R.C.M. 1921; Cal. Pol. C. Sec. 2851; re-en. Sec. 1776, R.C.M. 1935; R.C.M. 1947, 32-1511.

7-14-2831. Use of penalties. Penalties recovered under 7-14-2821 through 7-14-2830 must be paid to the county treasury for the use of the general road fund of the county.

History: En. Sec. 2828, Pol. C. 1895; re-en. Sec. 1465, Rev. C. 1907; re-en. Sec. 1774, R.C.M. 1921; Cal. Pol. C. Sec. 2895; re-en. Sec. 1774, R.C.M. 1935; R.C.M. 1947, 32-1509.

Cross-References

County road fund, 7-14-2513.

Part 29
Road Improvement Districts

Part Cross-References
General provisions related to county roads, Title 7, ch. 14, part 21.

7-14-2901. Road improvement district — purpose — benefited property defined. (1) The board of county commissioners may establish road improvement districts in those areas of the county that are not within the limits of an incorporated city or town.

(2) The purpose of a road improvement district is to allow a public entity to assess owners of parcels of land directly benefited by a proposed public road or a public road within the county that is not a county road or a highway to provide for the road's reconstruction, upgrade, repair, or maintenance. The county surveyor must determine that it would be physically impractical to improve the road to standard county road specifications.

(3) For the purposes of this part, "benefited property" means land within the district that receives a direct benefit from the road for which the road improvement district was created. A parcel of land is not benefited property if the parcel is within the district solely because the road passes over the property to provide access to benefited property. A parcel of land within the district used solely for agricultural purposes is not considered benefited property.

History: **En. Sec. 1, Ch. 308, L. 1989.**

7-14-2902. Creation of road improvement district — resolutions — hearing. (1) The board of county commissioners may establish a road improvement district upon petition of at least 60% of the landowners in the proposed district. The petition must:

(a) describe the boundaries of the proposed district;

(b) describe the proposed improvement;

(c) estimate the total cost of the improvement and suggest the method of making landowner assessments;

(d) if the improvement is a service, such as snowplowing, estimate the length of time the service is to be provided; and

(e) describe the manner of providing the improvement, such as through contract with a private party or local government.

(2) To establish a road improvement district, the board shall:

(a) pass a resolution of intent to form the district. The notice of intent to form the district must:

(i) be posted at three places within the proposed district;

(ii) be published as provided in 7-1-2121;

(iii) be mailed as provided in 7-1-2122 to every person, firm, or corporation or to the agent of the person, firm, or corporation owning real property within the proposed district listed in the name of the person, firm, or corporation upon the last completed assessment roll for state, county, and school district taxes; and

(iv) specify the method or methods by which the costs of the improvements are assessed against property in the district;

(b) (i) hold a public hearing no earlier than 30 days or later than 90 days after passage of the resolution of intent;

(ii) accept written protests at the hearing from property owners of the proposed district; and

(iii) receive general protests and comments at the hearing relating to the establishment of the road improvement district and its boundaries, service levels, or any other matter relating to the proposed district; and

(c) pass a resolution creating the road improvement district. The district is created effective 60 days after passage of the resolution unless by that date the owners of property in the district to be assessed for more than 50% of the cost of the proposed work, in accordance with the method or methods of assessment described in the resolution of intention, protest its creation.

(3) Based on testimony received in the public hearing, the board in the resolution creating the road improvement district may establish different boundaries or change the manner in which the area will provide services to its residents. The board may change district boundaries only if all landowners affected by the change were given written notice of the public hearing as provided in subsection (2)(a)(iii).

(4) The board of county commissioners may alter the boundaries or dissolve a road improvement district, using the same procedures required for the creation of a road improvement district. Any existing indebtedness of a road improvement district that is dissolved remains the responsibility of the owners of benefited property within the district, and any assets remaining after all indebtedness has been satisfied must be returned to the owners of property within the district.

History: En. Sec. 2, Ch. 308, L. 1989.

7-14-2903. Authority to conduct improvements. Upon petition of a majority of the landowners in a road improvement district, a board of county commissioners may authorize the reconstruction, upgrade, repair, maintenance, or other road improvement to be performed by the district. Before the board may authorize the improvement, notice must be mailed to the landowners of the road improvement district, as provided in 7-1-2122, and a public hearing must be held if one is requested in writing by any landowner in the district.

History: En. Sec. 3, Ch. 308, L. 1989.

7-14-2904 through 7-14-2906 reserved.

7-14-2907. Cost of road improvement districts — property owner assessments. (1) The cost of operating a road improvement district must be assessed upon all the benefited property in the district based upon the benefits received, and the board of county commissioners shall adopt one or any combination of the following methods of assessment for improvements made for the benefit of the district:

(a) Each parcel of benefited property assessed in such district may be assessed with that part of the whole cost which its assessable area bears to the assessable area of all the benefited parcels in the district, exclusive of roads and public places. For the purposes of this subsection (1)(a), “assessable area” means an area of a parcel of benefited property representing the benefit conferred upon the parcel by the improvement. Assessable area may be less than but may not exceed the actual area of the parcel.

(b) Each parcel of benefited property assessed in the district may be assessed with that part of the whole cost of the improvement based upon the assessed value of the benefited parcels of land within said district if the board determines such assessment to be equitable in proportion to and not exceeding the benefits received from the improvement by the parcel.

(c) Each parcel of benefited property in the district abutting upon the road where the improvement has been made may be assessed in proportion to its lineal feet abutting the road.

(d) Each parcel of benefited property in the district may be assessed an equal amount based upon the total cost of the improvement.

(2) The board may use one or any combination of methods of assessment in a single road improvement district and, if more than one improvement is undertaken, need not assess each parcel of benefited property in the district for the cost of all the improvements.

(3) Not later than the first Monday in September of each year, the board of county commissioners shall adopt a resolution levying and assessing upon all the benefited property in the district an amount equal to the total amount necessary for district operations. The amount necessary for district operations is the total of:

(a) (i) the estimated amount for improvements as authorized in 7-14-2903; and

(ii) the amount necessary to pay for debts for authorized improvements that cost more than estimated in previous years;

(b) less any amount in the road improvement district fund, as provided for in 7-14-2908, that may be unspent, unencumbered, and available for district use.

(4) (a) It is the duty of the county treasurer to collect the assessments in the same manner and at the same time as taxes for general purposes are collected.

(b) When an assessment becomes delinquent, the unpaid amount becomes a lien on the assessed parcel of land. The collection of delinquent assessments or enforcement of a lien may be made by any method authorized by law for the collection or payment of taxes.

History: En. Sec. 4, Ch. 308, L. 1989; amd. Sec. 3, Ch. 269, L. 1993.

7-14-2908. Improvement district maintenance fund. The money collected from the assessment provided for in 7-14-2907 must be paid into a road improvement district fund. Each road improvement district shall have a separate road improvement district fund. The fund may only be used to pay for expenses incurred by the district.

History: En. Sec. 5, Ch. 308, L. 1989.

Parts 30 through 40 reserved

Part 41

General Provisions Related to Municipal Trafficways and Public Grounds

Part Cross-References

Costs of discontinuation of trafficway, 7-14-104.

7-14-4101. Municipal authority to establish, alter, and maintain trafficways and public grounds. (1) The city or town council has power to lay out, establish, open, alter, widen, extend, grade, pave, or otherwise improve streets, alleys, avenues, sidewalks, and public grounds and to vacate the same.

(2) The council has power to order any work provided in this code to be done upon the streets, alleys, or public places of a city or town.

History: (1)En. Subd. 6, Sec. 5039, R.C.M. 1921; amd. Sec. 1, Ch. 115, L. 1925; amd. Sec. 1, Ch. 20, L. 1927; re-en. Sec. 5039.5, R.C.M. 1935; Sec. 11-906, R.C.M. 1947; (2)En. Sec. 4879, Pol. C. 1895; re-en. Sec. 3365, Rev. C. 1907; re-en. Sec. 5223, R.C.M. 1921; re-en. Sec. 5223, R.C.M. 1935; Sec. 84-4736, R.C.M. 1947; R.C.M. 1947, 11-906(part), 84-4736.

Cross-References

Improvement districts, 7-12-4131.

Procedure to discontinue, 7-14-2616.

Maintenance and regulation of public grounds, 7-14-4121.

Change of street grade, Title 7, ch. 14, part 42.

Authorization for indebtedness, 7-16-4104.

7-14-4102. Regulation of trafficways and public grounds. The city or town council may:

(1) regulate and prevent the use or obstruction of streets, sidewalks, and public grounds by signs, poles, wires, posting handbills or advertisements, or any obstruction;

(2) regulate and prohibit traffic and sales upon the streets, sidewalks, and public grounds;

(3) regulate or prohibit the fast driving of horses, animals, or vehicles within the city or town;

(4) provide for and regulate street crossings, curbs, and gutters;

(5) prevent horseracing or immoderate driving or riding in the streets of the city or town and regulate and provide for the hitching of all animals on the streets;

(6) regulate or prohibit coasting, skating, sliding, skateboarding, rollerblading, or tobogganing on the streets or alleys or other amusements dangerous or annoying to the inhabitants or having a tendency to frighten animals.

History: En. Subds. 8, 9, 10, 40, 41, Sec. 5039, R.C.M. 1921; amd. Sec. 1, Ch. 115, L. 1925; amd. Sec. 1, Ch. 20, L. 1927; re-en. Secs. 5039.7, 5039.8, 5039.9, 5039.39, 5039.40, R.C.M. 1935; R.C.M. 1947, 11-910, 11-911, 11-912, 11-942, 11-943; amd. Sec. 1, Ch. 287, L. 1995.

Compiler's Comments

1995 Amendment: Chapter 287 in (6), after "sliding", inserted "skateboarding, rollerblading"; and made minor changes in style.

7-14-4103. Regulation of motor vehicles. (1) The council of any incorporated city or town shall have power, by ordinance, to regulate motor vehicles and their speed within the limits of such city or town and to prescribe and enforce fines and penalties for violation of such regulations.

(2) As used in this section, the term "motor vehicles" shall include all vehicles propelled by any power other than muscular power, except traction engines, road rollers, fire wagons and engines, fire department vehicles, and police patrol wagons.

History: (1)En. Sec. 1, Ch. 49, L. 1917; re-en. Sec. 5041, R.C.M. 1921; re-en. Sec. 5041, R.C.M. 1935; Sec. 11-1002, R.C.M. 1947; (2)En. Sec. 2, Ch. 49, L. 1917; re-en. Sec. 5042, R.C.M. 1921; re-en. Sec. 5042, R.C.M. 1935; Sec. 11-1003, R.C.M. 1947; R.C.M. 1947, 11-1002, 11-1003.

Cross-References

Powers of local authorities, 61-8-103, 61-9-103, 61-12-101.

Reckless driving, 61-8-301, 61-8-715.

Altering of speed limits, 61-8-310.

Parking regulations, 61-8-355.

Persons under the influence of alcohol or drugs, 61-8-401.

7-14-4104. Prevention of obstructions on trafficways and public grounds. The city or town council has power to prevent the encumbering of streets, sidewalks, alleys, or public grounds with carriages, wagons, lumber, firewood, or other obstacles or materials.

History: En. Subd. 38, Sec. 5039, R.C.M. 1921; amd. Sec. 1, Ch. 115, L. 1925; amd. Sec. 1, Ch. 20, L. 1927; re-en. Sec. 5039.37, R.C.M. 1935; R.C.M. 1947, 11-940.

7-14-4105. Lighting and cleaning of trafficways and public grounds. The city or town council has power to:

(1) provide for lighting and cleaning the streets, alleys, and avenues;

(2) regulate the disposition and removal of ashes, garbage, or other offensive matter in any street or alley, on public grounds, or on any premises;

(3) regulate the use of sidewalks and require the owners of the adjoining premises to keep the same free from snow or other obstruction.

History: En. Subd. 7, Sec. 5039, R.C.M. 1921; amd. Sec. 1, Ch. 115, L. 1925; amd. Sec. 1, Ch. 20, L. 1927; re-en. Sec. 5039.6, R.C.M. 1935; amd. Sec. 1, Ch. 93, L. 1943; R.C.M. 1947, 11-909(part).

7-14-4106. Payment for cost of removing waste. (1) The city or town council has power to provide for levying the cost of the removal provided for in 7-14-4105(2) as a special tax against the property from which such matter was deposited.

(2) The city or town council may further, until full liquidation is realized, include in such tax an amount not to exceed 20% of any floating indebtedness consisting of valid outstanding warrants drawn and issued against the fund or funds used to defray the expense of removing such matter, existing at the close of business on June 30, 1943, together with not to exceed such per centum of the current interest thereon from such last-mentioned date. The money derived from such portion of such levy and assessment for such additional amount, if included in such tax, may only be expended toward liquidating such floating indebtedness, together with the interest thereon, and not otherwise.

History: En. Subd. 7, Sec. 5039, R.C.M. 1921; amd. Sec. 1, Ch. 115, L. 1925; amd. Sec. 1, Ch. 20, L. 1927; re-en. Sec. 5039.6, R.C.M. 1935; amd. Sec. 1, Ch. 93, L. 1943; R.C.M. 1947, 11-909(part).

7-14-4107. Maintenance of trafficways. The city or town council may provide for the maintenance of the streets, alleys, and public places of the city or town and may fix rates to defray the cost of said work as provided in Title 7, chapter 12, part 44.

History: En. Subd. 69, Sec. 5039, R.C.M. 1921; amd. Sec. 1, Ch. 115, L. 1925; amd. Sec. 1, Ch. 20, L. 1927; re-en. Sec. 5039.68, R.C.M. 1935; R.C.M. 1947, 11-971; amd. Sec. 18, Ch. 212, L. 1983.

7-14-4108. Authority to contract for road work when federal funds involved. Whenever highway construction work is to be financed in whole or in part by federal funds, the council, commission, or other governing body of any city or town may contract jointly or independently with the department of transportation, United States federal highway administration, or other federal agency for the construction or reconstruction of highways, roads, and streets, to acquire rights-of-way, and to do any other thing essential and practical in securing the highway, road, and street construction or reconstruction or rights-of-way as may be agreed upon between the council, commission, or other governing body and the department of transportation or federal agency. All contracts for work on highways, roads, and streets which are let pursuant to this authority shall be let by the transportation commission.

History: En. Sec. 1, Ch. 69, L. 1957; amd. Sec. 1, Ch. 316, L. 1974; R.C.M. 1947, 11-1023; amd. Sec. 3, Ch. 512, L. 1991; amd. Sec. 6, Ch. 75, L. 1995.

Compiler's Comments

1995 Amendment — Phrase Change: Section 6, Ch. 75, L. 1995, directed the Code Commissioner to change references in the MCA to Highway Commission to Transportation Commission. In this section, the Code Commissioner has made the change in the last sentence. Amendment effective July 1, 1995.

Cross-References

Letting of contracts by Highway Commission, 60-2-111.

7-14-4109. Power to order certain improvements without creation of special improvement district. (1) Without the formation of a special improvement district, the city council may order sidewalks, curbs, or gutters constructed in front of any lot or parcel of land and may order alley approaches constructed or replaced adjacent to any lot or parcel of land.

(2) Whenever the council orders any such sidewalk, curb, or gutter constructed or any such alley approach constructed or replaced, the order shall be entered upon the minutes of the council and shall name the street along which the sidewalk, curb, or gutter is to be constructed or along which the alley approach is to be constructed or replaced.

(3) After the making of such order, written notice thereof shall be given to the owner or agent of the owner and to any purchaser under contract for deed of such property or the owners or agents of all adjacent owners having access to their properties by the alley approach, as appropriate, in such manner as the council may direct.

(4) If the owner or agent of the owner of such lot or parcel of land or if the owners or agents of all adjacent owners having access to their property by the alley approach fail or neglect for a period of 30 days after the date of service of the notice to cause such sidewalk, curb, or gutter to be constructed or to cause such alley approaches to be constructed or replaced, the city may construct or cause the sidewalk, curb, or gutter to be constructed or may construct or cause the alley approach to be constructed and shall assess the cost thereof, including engineering costs and the costs enumerated in 7-12-4121 and 7-12-4169, against the property in front of which the same is constructed or against the lots or parcels of land having access via the constructed alley approaches. The

collection of the assessed costs shall be as provided in 7-12-4181 through 7-12-4191.

(5) (a) When any sidewalk, curb, or gutter or alley approach is constructed by or under direction of the city council, payment for the construction shall be made by special warrants in such form as may be prescribed by ordinance and drawn against a fund to be known as the special sidewalk, curb, and gutter fund or the special alley approach fund, as appropriate, and the council may provide for the payment of interest annually.

(b) The warrants drawn on the special alley approach fund shall bear interest at a rate pursuant to 17-5-102.

History: Ap. p. Sec. 20, Ch. 89, L. 1913; re-en. Sec. 5244, R.C.M. 1921; amd. Sec. 1, Ch. 12, L. 1929; re-en. Sec. 5244, R.C.M. 1935; amd. Sec. 1, Ch. 19, L. 1965; amd. Sec. 15, Ch. 234, L. 1971; Sec. 11-2226, R.C.M. 1947; Ap. p. 11-2226.1 by Sec. 1, Ch. 206, L. 1971; Sec. 11-2226.1, R.C.M. 1947; R.C.M. 1947, 11-2226(part), 11-2226.1(part); amd. Sec. 10, Ch. 253, L. 1979; amd. Sec. 1, Ch. 457, L. 1983; amd. Sec. 7, Ch. 526, L. 1983.

7-14-4110. Assessments for costs. (1) The payment of assessments to defray the cost of construction of the sidewalks, curbs, and gutters referred to in 7-14-4109 or any combination thereof or alley approach may be spread over a term of not to exceed 12 years, payment to be made in equal annual installments.

(2) The city council shall, annually before the first Monday of October, pass and adopt a resolution levying an assessment and tax against each lot or parcel of land in front of which sidewalks, curbs, and gutters or any combination thereof have been constructed under orders of the city council or each lot or parcel of land having access to said property via the alley approach which has been constructed under orders of the city council. Said resolution levying such assessment shall be in every manner prepared and certified the same as resolutions levying assessments for the making of improvements in special improvement districts.

History: Ap. p. Sec. 20, Ch. 89, L. 1913; re-en. Sec. 5244, R.C.M. 1921; amd. Sec. 1, Ch. 12, L. 1929; re-en. Sec. 5244, R.C.M. 1935; amd. Sec. 1, Ch. 19, L. 1965; amd. Sec. 15, Ch. 234, L. 1971; Sec. 11-2226, R.C.M. 1947; Ap. p. 11-2226.1 by Sec. 1, Ch. 206, L. 1971; Sec. 11-2226.1, R.C.M. 1947; R.C.M. 1947, 11-2226(part), 11-2226.1(part); amd. Sec. 2, Ch. 457, L. 1983.

Cross-References

Special improvement districts, Title 7, ch. 12, part 41.

7-14-4111. Determination of alley approach. What constitutes an alley approach shall be defined by the city council of each municipality which orders in alley approaches as provided in 7-14-4109.

History: En. 11-2226.1 by Sec. 1, Ch. 206, L. 1971; R.C.M. 1947, 11-2226.1(part).

7-14-4112. Change of name of street. (1) Any town or city council may in its judgment, when it appears to the best interest of the town or city and the inhabitants thereof, expressed by resolution duly and regularly passed and adopted, change the name or number of any street or avenue, subject to the conditions provided for in subsection (2), except that 51% of the property owners objecting to the change of name or question involved shall be supreme in this matter.

(2) The town or city engineer (if there be no such officer, the council may employ one for such purpose) shall prepare a plat showing such subdivisions,

streets, and avenues affected by such change, with the appropriate notation of change thereon. Upon approval of such plat by the council and the filing of the same as approved with the county clerk and recorder wherein the town or city is situated, the names or numbers of said streets and avenues shall be deemed changed in accordance to the terms of said resolution as provided for in subsection (1).

History: **En. Secs. 1, 2, Ch. 21, L. 1939; R.C.M. 1947, 11-907, 11-908.**

7-14-4113. Use of city road fund. The city treasurer shall hold the fees paid pursuant to 7-14-2512(1)(b) in a separate city road fund which shall be used by the city council only for the construction, repair, and maintenance of permanent highways and streets within the corporate limits.

History: **En. Sec. 7-203, Ch. 197, L. 1965; amd. Sec. 2, Ch. 467, L. 1975; R.C.M. 1947, 32-3703(2).**

7-14-4114. Procedure to discontinue streets. (1) The council may discontinue a street or alley or any part thereof in a city or town, if it can be done without detriment to the public interest, upon:

(a) a petition in writing of all owners of lots on the street or alley; or

(b) (i) a petition in writing of more than 50% of the owners of lots on the street or alley; and

(ii) approval by a majority vote of the council.

(2) Where the street or alley is to be closed for school purposes, the council may discontinue the street or alley upon a petition signed by 75% of the lot owners on the whole street or alley to be closed.

(3) Before acting upon such petition, a notice must be published or posted in three public places, stating when such petition will be acted on and what street or alley or part thereof is asked to be vacated. Such notice must be published in a newspaper or posted at least 1 week before the petition is acted on.

History: **(1), (2)En. Sec. 429, 5th Div. Comp. Stat. 1887; amd. Sec. 5030, Pol. C. 1895; re-en. Sec. 3479, Rev. C. 1907; re-en. Sec. 5306, R.C.M. 1921; amd. Sec. 1, Ch. 13, L. 1929; re-en. Sec. 5306, R.C.M. 1935; amd. Sec. 1, Ch. 1, L. 1941; amd. Sec. 1, Ch. 36, L. 1945; Sec. 11-2801, R.C.M. 1947; (3)En. Sec. 429, 5th Div. Comp. Stat. 1887; amd. Sec. 5031, Pol. C. 1895; re-en. Sec. 3480, Rev. C. 1907; re-en. Sec. 5307, R.C.M. 1921; re-en. Sec. 5307, R.C.M. 1935; Sec. 11-2802, R.C.M. 1947; R.C.M. 1947, 11-2801(part), 11-2802; amd. Sec. 1, Ch. 78, L. 1989.**

Cross-References

Vacation of plats, Title 7, ch. 5, part 25;
76-3-305.

7-14-4115. Discontinuance of street not to affect utility easements. The vacation authorized by 7-14-4114 shall not affect the right of any public utility to continue to maintain its plant and equipment in any such streets or alleys.

History: **En. Sec. 429, 5th Div. Comp. Stat. 1887; amd. Sec. 5030, Pol. C. 1895; re-en. Sec. 3479, Rev. C. 1907; re-en. Sec. 5306, R.C.M. 1921; amd. Sec. 1, Ch. 13, L. 1929; re-en. Sec. 5306, R.C.M. 1935; amd. Sec. 1, Ch. 1, L. 1941; amd. Sec. 1, Ch. 36, L. 1945; R.C.M. 1947, 11-2801(part).**

Cross-References

Vacation of plats, 76-3-305.

7-14-4116 through 7-14-4120 reserved.

7-14-4121. Maintenance and regulation of public grounds. The city or town council has power to provide for enclosing, improving, and regulating all public grounds belonging to the city or town.

History: En. Subd. 74, Sec. 5039, R.C.M. 1921; amd. Sec. 1, Ch. 115, L. 1925; amd. Sec. 1, Ch. 20, L. 1927; re-en. Sec. 5039.73, R.C.M. 1935; R.C.M. 1947, 11-976.

Cross-References

Municipal authority over public grounds, 7-14-4101.

7-14-4122. Construction and maintenance of sidewalks, curbs, and gutters. (1) The city or town council has power to regulate and provide for the construction or repair of sidewalks, foot pavements, curbs, gutters, or any combination thereof.

(2) If the owner of any lot fails to comply with the provisions of the ordinance within such time as may be prescribed thereby, the council may contract for the construction and repair of such sidewalks, pavements, curbs, gutters, or any combination thereof and the city or town may pay for the same. The amount so paid is a lien upon the lot and may be enforced or the amount may be recovered against the owner by a suit before any court of competent jurisdiction.

History: En. Subd. 65, Sec. 5039, R.C.M. 1921; amd. Sec. 1, Ch. 115, L. 1925; amd. Sec. 1, Ch. 20, L. 1927; re-en. Sec. 5039.64, R.C.M. 1935; R.C.M. 1947, 11-967.

7-14-4123. Regulation of sidewalks. The city or town council has power to prevent the riding or driving of animals or the drawing or riding of vehicles of any kind on the sidewalks of the city or the doing of damage in any way to the sidewalks.

History: En. Subd. 39, Sec. 5039, R.C.M. 1921; amd. Sec. 1, Ch. 115, L. 1925; amd. Sec. 1, Ch. 20, L. 1927; re-en. Sec. 5039.38, R.C.M. 1935; R.C.M. 1947, 11-941.

Part 42

Establishment and Change of Street Grade

7-14-4201. Establishment and alteration of street grade. (1) The city or town council has power to establish the grade of any street, alley, or avenue.

(2) When the grade has been established, it must not be changed except by a vote of the majority of the council and not then until the damage to property owners caused by the change of grade has been assessed and determined by three disinterested appraisers, who must be appointed by the mayor and confirmed by the council, who must make an appraisement, taking into consideration the benefits, if any, to the property, and who must file their report with the clerk within 10 days after receiving notice of their appointment. The amount of damages so assessed must be tendered to the owner or his agent before any change of grade is made.

History: En. Subd. 68, Sec. 5039, R.C.M. 1921; amd. Sec. 1, Ch. 115, L. 1925; amd. Sec. 1, Ch. 20, L. 1927; re-en. Sec. 5039.67, R.C.M. 1935; R.C.M. 1947, 11-970.

7-14-4202. Payment of damages resulting from change of grade. When the grade of any street or sidewalk in any city or town is established by the corporate authority of such city or town and a building shall thereafter be constructed upon a lot abutting on said street, no change must be made in the grade of such street or sidewalk which requires the raising or lowering of any building so constructed until the damages which may accrue by reason of such raising or lowering are ascertained and paid as is hereinafter provided.

History: En. Sec. 4940, Pol. C. 1895; re-en. Sec. 3441, Rev. C. 1907; re-en. Sec. 5300, R.C.M. 1921; re-en. Sec. 5300, R.C.M. 1935; R.C.M. 1947, 11-2601.

7-14-4203. Determination of damages. (1) In case the council of such city or town and the owner of such building are unable to agree upon the amount of such damages, the council must appoint three disinterested freeholders of such city or town to appraise such damages.

(2) The appraisers so appointed, after being duly sworn, must appraise the damage and make two written reports thereof, signed by at least a majority of them, one of which must be delivered to the clerk of such city or town to be immediately filed in his office and the other to the owner of the building. Such report must be made and delivered within 10 days after the appointment of the appraisers.

History: Ap. p. Sec. 4941, Pol. C. 1895; re-en. Sec. 3442, Rev. C. 1907; re-en. Sec. 5301, R.C.M. 1921; re-en. Sec. 5301, R.C.M. 1935; Sec. 11-2602, R.C.M. 1947; Ap. p. Sec. 4942, Pol. C. 1895; re-en. Sec. 3443, Rev. C. 1907; re-en. Sec. 5302, R.C.M. 1921; re-en. Sec. 5302, R.C.M. 1935; Sec. 11-2603, R.C.M. 1947; R.C.M. 1947, 11-2602, 11-2603.

7-14-4204. Appeal from determination of damages. (1) Within 20 days after the filing of the report with the clerk, either party feeling dissatisfied with such appraisement may file in the office of the clerk of the district court within the county in which such city or town is located a copy of such report, certified by the clerk of such city or town, and file with said clerk and serve on the opposite party a notice of appeal from such report.

(2) Upon the filing of the report and the notice of appeal, the clerk of the district court must cause such proceedings to be entered on the register of actions, designating such city or town as plaintiff and the owner of the building as defendant. The question of the amount of damages may be tried by a jury or the court.

(3) The report of the appraisers is the complaint, all the material facts of which in reference to damages are considered denied, and these constitute the issues to be tried.

History: (1), (2)En. Sec. 4943, Pol. C. 1895; re-en. Sec. 3444, Rev. C. 1907; re-en. Sec. 5303, R.C.M. 1921; re-en. Sec. 5303, R.C.M. 1935; Sec. 11-2604, R.C.M. 1947; (3)En. Sec. 4944, Pol. C. 1895; re-en. Sec. 3445, Rev. C. 1907; re-en. Sec. 5304, R.C.M. 1921; re-en. Sec. 5304, R.C.M. 1935; Sec. 11-2605, R.C.M. 1947; R.C.M. 1947, 11-2604, 11-2605.

7-14-4205. Payment of costs. In case the owner of the building appeals and the damages are not increased or in case the city or town appeals and the damages are decreased in the district court, the costs must be paid by the defendant. In all other cases or in the case no appeal is taken, the costs must be paid by the city or town.

History: En. Sec. 4945, Pol. C. 1895; re-en. Sec. 3446, Rev. C. 1907; re-en. Sec. 5305, R.C.M. 1921; re-en. Sec. 5305, R.C.M. 1935; R.C.M. 1947, 11-2606.

Cross-References

Costs allowed in civil actions, Title 25, ch. 10.

Part 43

Municipal Regulation of Railways and Street Railroads

7-14-4301. Regulation of railways. (1) The city or town council has power to grant the right-of-way through the streets, avenues, and other property of a city or town for the purpose of street or other railroads, to regulate the running and management of the same and to compel the owner of such street or other railroad to keep the street in repair when occupied by such street or other railroad, to regulate the speed of railroad engines, and to require railroad companies to station flagmen at street crossings.

(2) The city or town council has power to regulate and control the laying of railroad tracks and to prohibit the use of engines and locomotives propelled by steam or otherwise or to regulate the speed thereof when used.

History: (1)En. Subd. 66, Sec. 5039, R.C.M. 1921; amd. Sec. 1, Ch. 115, L. 1925; amd. Sec. 1, Ch. 20, L. 1927; re-en. Sec. 5039.65, R.C.M. 1935; Sec. 11-968, R.C.M. 1947; (2)En. Subd. 11, Sec. 5039, R.C.M. 1921; amd. Sec. 1, Ch. 115, L. 1925; amd. Sec. 1, Ch. 20, L. 1927; re-en. Sec. 5039.10, R.C.M. 1935; Sec. 11-913, R.C.M. 1947; R.C.M. 1947, 11-913, 11-968.

7-14-4302. Regulation of lighting for railway right-of-way — crossings. (1) The city or town council may require the lighting of any railroad track or route within a city or town, the cars of which are propelled by steam or otherwise, and fix and determine the number, style, and size of lampposts, burners, lamps, and all other fixtures and apparatus necessary for such lighting and the points of location of the lampposts.

(2) The city or town council may:

(a) require the construction of crossings on the line of any railroad track or route within the city or town, the cars of which are propelled by steam or otherwise, where the track intersects or crosses any street, alley, or public highway or runs along the same; and

(b) fix and determine the size, kind, and grade of the crossing.

(3) In case the owner of such railroad fails to comply with the requirements, the council may cause the same to be done. The council may assess the expense thereof against the owner, and the expense constitutes a lien on any property belonging to the owner within the city or town and may be collected as other taxes.

History: En. Subd. 12, Sec. 5039, R.C.M. 1921; amd. Sec. 1, Ch. 115, L. 1925; amd. Sec. 1, Ch. 20, L. 1927; re-en. Secs. 5039.11, R.C.M. 1935; R.C.M. 1947, 11-914; amd. Sec. 11, Ch. 253, L. 1979.

7-14-4303. Authorization for and regulation of street railroads. The city or town council has power to license and authorize the construction and operation of street railroads and to require them to conform to the grade of the street as the same is or may be established.

History: En. Subd. 13, Sec. 5039, R.C.M. 1921; amd. Sec. 1, Ch. 115, L. 1925; amd. Sec. 1, Ch. 20, L. 1927; re-en. Secs. 5039.12, R.C.M. 1935; R.C.M. 1947, 11-915.

Part 44
Municipal Bus Services

Part Cross-References
Urban transportation districts, Title 7, ch. 14, part 2.

7-14-4401. Provision of bus service. Whenever a city or town is not being served by a bus company or operator operating on a regular schedule and under the jurisdiction of the public service commission or if such service is likely to be discontinued in the immediate future, the city or town council of the incorporated city or town:

(1) may contract an indebtedness of any such city or town upon the credit thereof by borrowing money or issuing bonds for the purchase, development, operation, or leasing of motorbuses and buslines for the transportation of passengers within the corporate limits of such cities and towns and to operate the same to any point or points beyond these limits not to exceed 8 miles measured along the route of the busline;

(2) shall have the power to enter into a contract or contracts or to enter into a lease or a lease and operating agreement with an independent carrier or independent carriers for the transportation of passengers by bus within the corporate limits of such city or town and to and from any point or points beyond said limits not to exceed 8 miles measured along the route of said busline or buslines.

History: Ap. p. Sec. 1, Ch. 101, L. 1951; amd. Sec. 1, Ch. 211, L. 1955; amd. Sec. 1, Ch. 120, L. 1957; amd. Sec. 21, Ch. 315, L. 1974; amd. Sec. 24, Ch. 566, L. 1977; Sec. 11-1019, R.C.M. 1947; Ap. p. Sec. 3, Ch. 211, L. 1955; amd. Sec. 1, Ch. 120, L. 1957; amd. Sec. 21, Ch. 315, L. 1974; Sec. 11-1021, R.C.M. 1947; R.C.M. 1947, 11-1019(part), 11-1021(part).

7-14-4402. Limit on indebtedness to provide bus service. The total amount of indebtedness authorized under 7-14-4401(1) to be contracted in any form, including the then-existing indebtedness, may not at any time exceed 28% of the total taxable value of the property of the city or town subject to taxation as ascertained by the last assessment for state and county taxes. No money may be borrowed or bonds issued for the purposes specified in 7-14-4401(1) until the proposition has been submitted to the vote of the taxpayers of the city or town and the majority vote cast in its favor.

History: En. Sec. 1, Ch. 101, L. 1951; amd. Sec. 1, Ch. 211, L. 1955; amd. Sec. 1, Ch. 120, L. 1957; amd. Sec. 21, Ch. 315, L. 1974; amd. Sec. 24, Ch. 566, L. 1977; R.C.M. 1947, 11-1019(part); amd. Sec. 53, Ch. 614, L. 1981.

7-14-4403. Operation of municipal busline. The city or town council or commission shall have authority to provide for the management and operation of the system authorized by 7-14-4401(1) and to do all things necessary for the successful operation of said transportation system.

History: En. Sec. 2, Ch. 101, L. 1951; amd. Sec. 1, Ch. 211, L. 1955; amd. Sec. 1, Ch. 120, L. 1957; R.C.M. 1947, 11-1020; amd. Sec. 1, Ch. 160, L. 1983.

7-14-4404. Tax levy for contracts to operate bus service. For the purpose of raising the necessary money to defray the cost of the transportation service authorized by 7-14-4401(2) pursuant to a contract, lease, or lease and operating agreement with an independent carrier or carriers, the city or town council may annually levy a tax on the taxable value of all taxable property within the limits of the city or town. Whenever the council of the city or town considers it necessary to raise money by taxation for transportation services in excess of the levy allowed by law, the council of the city or town shall in the manner prescribed by law submit the question of the additional levy to the qualified electors of the city or town, either at the regular annual election held in the city or town or at a special election that is held in conjunction with a regular or primary election and that is called for that purpose by the council of the city or town. The additional levy may not exceed 1 ½ mills.

History: En. Sec. 3, Ch. 211, L. 1955; amd. Sec. 1, Ch. 120, L. 1957; amd. Sec. 21, Ch. 315, L. 1974; R.C.M. 1947, 11-1021(part); amd. Sec. 12, Ch. 253, L. 1979; amd. Sec. 51, Ch. 387, L. 1995.

Compiler's Comments

1995 Amendment: Chapter 387 in second sentence, near end before "called", inserted "that is held in conjunction with a regular or primary election and that is" and in third sentence, after "levy", deleted "in excess of the levy now allowed by law"; and made minor changes in style.

7-14-4405. Bids for bus service contracts authorized — operation of bus service. The city or town council shall have power and authority to call for bids from independent carriers for such transportation service authorized by 7-14-4401(2) and to do all things necessary or proper for establishment and maintenance of such transportation service by contract, lease, or lease and operating agreement.

History: En. Sec. 4, Ch. 211, L. 1955; amd. Sec. 1, Ch. 120, L. 1957; R.C.M. 1947, 11-1022.

Part 45
Municipal Parking

7-14-4501. Acquisition, construction, and maintenance of parking areas. A city or town council shall have power to:

(1) acquire by lease, gift, purchase, or condemnation lots or lands for use as parking areas for motor vehicles;

(2) construct and maintain thereon or on any premises owned or under lease by such city or town suitable parking facilities for the use of the public and for general traffic control; and

(3) make charges for the use of such facilities.

History: En. Sec. 1, Ch. 96, L. 1951; R.C.M. 1947, 11-1018(part).

Cross-References

Parking Commissions, Title 7, ch. 14, part 46.

7-14-4502. Bond issue to finance parking areas. A city or town council shall have power to:

(1) issue bonds or other securities for the payment of the lots or lands and facilities referred to in 7-14-4501, payable in whole or in part from the revenues of any such parking lots or areas or parking facilities or from other sources; and

(2) pledge, place a charge upon, or otherwise make available as additional security for the payment of such bonds or securities any or all revenues from any or all street parking meters owned or to be owned and controlled by said city or town.

History: En. Sec. 1, Ch. 96, L. 1951; R.C.M. 1947, 11-1018(part).

Cross-References

Parking Commissions, Title 7, ch. 14, part 46.

7-14-4503 through 7-14-4510 reserved.

7-14-4511. Provision of parking meters in smaller municipalities — ordinance required. The city or town council of any incorporated city or town of 2,500 population or less is hereby empowered to enact an ordinance or ordinances:

(1) to purchase, rent, lease, or otherwise acquire coin-operating parking meters or other devices or instruments used for the purpose of measuring the duration of time an automobile or other vehicle is parked;

(2) to install, maintain, and operate said meters, devices, or instruments at or near any public street, highway, avenue, or other public place within the corporate limits of such city or town;

(3) to provide for such regulations as necessary to govern the use of its public streets, highways, avenues, or other public places for the purpose of parking automobiles or other vehicles and the use of said meters, devices, or instruments in conjunction therewith, including the establishment and designation of zones or areas where said meters, devices, or instruments are to be used.

History: En. Sec. 1, Ch. 91, L. 1949; R.C.M. 1947, 11-1015.

Cross-References

Use of parking meter revenue, 7-14-4643.

7-14-4512. Referendum on parking meters prior to enacting ordinance. An ordinance providing for the purchasing, renting, leasing, or otherwise acquiring or installing, maintaining, operating, or using parking meters, devices, or instruments may not be enacted unless the question of whether or not the ordinance may be enacted has been submitted to the qualified electors of the city or town at a general election or a special election that is held in conjunction with a regular or primary election and that is called for that purpose. An ordinance may not be enacted unless authorized by a majority of the votes cast are in favor of enacting the ordinance.

History: En. Sec. 2, Ch. 91, L. 1949; R.C.M. 1947, 11-1016; amd. Sec. 52, Ch. 387, L. 1995.

Compiler's Comments

1995 Amendment: Chapter 387 in first sentence, near end before "called", inserted "that is held in conjunction with a regular or primary election and that is"; and made minor changes in style.

Part 46
Parking Commissions

Part Cross-References

Municipal authority — parking areas, 7-14-4501.

7-14-4601. Findings and purpose. (1) It is hereby determined and declared that excessive curb parking of motor vehicles in urban and metropolitan areas and the lack of adequate offstreet parking facilities in some cities is against the public interest.

(2) The purpose of this part is to provide means whereby cities in which additional offstreet parking facilities are considered necessary may obtain and provide same and whereby such cities may regulate onstreet and offstreet parking in a coordinated manner.

History: **En. Sec. 1, Ch. 223, L. 1951; amd. Sec. 1, Ch. 127, L. 1955; amd. Sec. 2, Ch. 77, L. 1975; R.C.M. 1947, 11-3701.**

7-14-4602. Definitions. The following terms, wherever used or referred to in this part, shall have the following respective meanings unless a different meaning clearly appears from the context:

(1) "City" shall mean the particular city for which a particular commission may be created or which may act as such a commission pursuant to resolution of its legislative body.

(2) "Clause" includes article, section, subsection, paragraph, sentence, or provision.

(3) "Clerk" shall mean the clerk of the city or the officer charged with the duties customarily imposed on such clerk.

(4) "Commission" or "parking commission" shall mean any of the public corporations which may be created by a city and any city which may exercise the powers of a parking commission pursuant to resolution adopted by its legislative body under the provisions of 7-14-4603 through 7-14-4608.

(5) "Indenture" means ordinance, resolution, or indenture which may be passed, adopted, or entered into by a commission or by the legislative body of a city.

(6) "Legislative body" shall mean the city council or other body in which the general legislative powers of the city are vested.

(7) "Mayor" shall mean the mayor of the city or the officer thereof charged with the duties customarily imposed on the mayor or executive head of the city.

(8) "Obligee of the commission" or "obligee" shall be any bondholder, trustee or trustees for any bondholders, or lessor demising to the commission property used in connection with a parking facility or any assignee or assignees of such lessor's interest or any part thereof and the state or the United States or any agency of either when a party to any contract with a commission by which aid or a loan is given or made to the commission.

(9) "Project" shall mean any acquisition, improvement, construction, or undertaking of any kind authorized by this part.

(10) "State public body" means the state or any city, commission, or any other subdivision or public body of the state.

History: **En. Sec. 2, Ch. 223, L. 1951; amd. Sec. 1, Ch. 401, L. 1973; R.C.M. 1947, 11-3702.**

7-14-4603. Creation of parking commission authorized. A city may create, as provided for in 7-14-4603 through 7-14-4608, a public body to be known as the parking commission of the city. The commission of any city shall not transact any business or exercise any powers under this part unless and until the legislative body of the city shall by resolution declare that there is need for a parking commission to function in such city.

History: **En. Sec. 3, Ch. 223, L. 1951; amd. Sec. 2, Ch. 127, L. 1955; R.C.M. 1947, 11-3703(part).**

7-14-4604. Public nature of parking commission. Each commission shall constitute a public body, corporate and politic, exercising public and essential governmental functions.

History: En. Sec. 7, Ch. 223, L. 1951; amd. Sec. 4, Ch. 77, L. 1975; R.C.M. 1947, 11-3707(part).

7-14-4605. Determination of need to create parking commission. The determination as to whether there is need for a commission to function may be made by the legislative body on its own motion or upon the filing of a petition signed by 100 residents of the city asserting that there is need for a commission to function in such city and requesting that the legislative body so declare.

History: En. Sec. 3, Ch. 223, L. 1951; amd. Sec. 2, Ch. 127, L. 1955; R.C.M. 1947, 11-3703(part).

7-14-4606. Resolution of need required. A city shall not transact any business or exercise any powers of this part unless and until the legislative body of the city shall by resolution declare that there is need for such city to exercise the powers of a parking commission as provided in this part.

History: En. Sec. 3, Ch. 223, L. 1951; amd. Sec. 2, Ch. 127, L. 1955; R.C.M. 1947, 11-3703(part).

7-14-4607. Resolution for parking commission to function. In any suit, action, or proceeding by or against or in any manner relating to a parking commission, the commission shall be conclusively deemed to have become established and authorized to transact business and exercise its powers upon proof of the adoption of a resolution by the legislative body declaring the need for the commission to function.

History: En. Sec. 3, Ch. 223, L. 1951; amd. Sec. 2, Ch. 127, L. 1955; R.C.M. 1947, 11-3703(part).

7-14-4608. Adoption of resolutions — jurisdictional area. Either or both such resolutions referred to in 7-14-4606 and 7-14-4607 may be adopted by the legislative body of a city. If both such resolutions are adopted, they shall clearly specify areas within the city, less than the whole thereof, within which or projects over which the commission and the city, respectively, are to have jurisdiction and control. The division of such jurisdiction and control shall be as so specified but may be changed from time to time by action of both the legislative body and the commission to such extent as may be consistent with obligations to bondholders assumed under this part.

History: En. Sec. 3, Ch. 223, L. 1951; amd. Sec. 2, Ch. 127, L. 1955; R.C.M. 1947, 11-3703(part).

7-14-4609. Appointment of commission. (1) When the legislative body of a city first adopts a resolution declaring need for a parking commission to function, the mayor, with the approval of the legislative body, shall appoint not less than five or more than seven electors of the city as members of the commission.

(2) The number of members of such commission, once established, may be changed within these limits from time to time as desired by subsequent resolutions of the legislative body of the city. A resolution to reduce shall not require resignation of any member prior to completion of his appointed term.

History: En. Sec. 4, Ch. 223, L. 1951; amd. Sec. 3, Ch. 77, L. 1975; R.C.M. 1947, 11-3704(part).

7-14-4610. Term of office. (1) Three of the members who are first appointed shall be designated to serve for terms of 1, 2, and 3 years, respectively, from the date of their appointments, and two shall be designated to serve for terms of 4 years from the date of their appointment. For a seven-member commission, there shall be two additional appointments of 2 years and 3 years, respectively.

(2) Thereafter members shall be appointed as aforesaid for a term of office of 4 years, except that all vacancies occurring during a term shall be filled for the unexpired term. A member shall hold office until his successor has been appointed and has qualified.

History: En. Sec. 4, Ch. 223, L. 1951; amd. Sec. 3, Ch. 77, L. 1975; R.C.M. 1947, 11-3704(part).

7-14-4611. Removal of parking commission member. A member of a commission may be removed by the mayor with the consent of the legislative body of the city.

History: En. Sec. 4, Ch. 223, L. 1951; amd. Sec. 3, Ch. 77, L. 1975; R.C.M. 1947, 11-3704(part).

7-14-4612. Organization and operation of commission. (1) The powers of each commission shall be vested in the members thereof then in office.

(2) The appointing officer shall designate which of the members of the commission shall be the first chairman, but when the office of chairman of the commission becomes vacant thereafter, the commission shall elect a chairman from among its members. The term of office as chairman of the commission, unless otherwise prescribed by the legislative body of the city, shall be for the calendar year or for that portion thereof remaining after each such chairman is designated or elected.

(3) Members shall receive their actual and necessary expenses, including traveling expenses, and may receive such other compensation as the legislative body may prescribe.

History: En. Sec. 4, Ch. 223, L. 1951; amd. Sec. 3, Ch. 77, L. 1975; R.C.M. 1947, 11-3704(part).

7-14-4613. Funds for administrative purposes of parking commission. When any city or the commission created for it becomes authorized to transact business and exercise the powers of a parking commission, the legislative body of the city, subject to its fiscal law, may, at that time and from time to time thereafter, make an estimate of the amount of money required for administrative purposes of the commission and may appropriate such amounts to the commission as it deems necessary, subject to such conditions as the legislative body may prescribe.

History: En. Sec. 5, Ch. 223, L. 1951; amd. Sec. 2, Ch. 401, L. 1973; R.C.M. 1947, 11-3705(1).

7-14-4614. Annual audit of financial affairs of parking commission. The financial affairs of the parking commission shall be audited annually by independent certified public accountants.

History: En. Sec. 5, Ch. 223, L. 1951; amd. Sec. 2, Ch. 401, L. 1973; R.C.M. 1947, 11-3705(part).

7-14-4615. Reports on commission transactions. The legislative body shall cause:

(1) a detailed report of all transactions of the parking commission, including a statement of all revenues and expenditures, to be filed with it at quarterly, semiannual, or annual intervals as the legislative body may prescribe; and

(2) a summary statement of all its financial affairs to be published at least once annually in a newspaper of general circulation published in the city or, if none is so published, then in such newspaper of general circulation as it may deem most likely to give notice to all residents of the city.

History: En. Sec. 5, Ch. 223, L. 1951; amd. Sec. 2, Ch. 401, L. 1973; R.C.M. 1947, 11-3705(part).

7-14-4616. Termination of parking commission due to inaction — windup of commission affairs. (1) After the lapse of 4 years from the date of adoption of a resolution declaring the need for a parking commission to function in a city, if such commission shall not have acquired or entered into possession of land for a parking facility or issued bonds, the legislative body of such city may by resolution declare that there is no need for such commission in the community. Thereupon the offices of the members of the commission shall become vacant and the capacity of the commission to transact business or exercise any powers shall be suspended and shall remain suspended until the legislative body thereafter adopts a resolution declaring the need for the commission to function.

(2) After adoption of a resolution declaring there is no need for such commission to function or while any such resolution is in effect, the legislative body of a city shall have power to wind up the affairs of the commission and shall have title to all property of the commission for the purpose of offstreet parking only, to be leased to and operated by companies, individuals, or corporations.

History: En. Sec. 6, Ch. 223, L. 1951; R.C.M. 1947, 11-3706(part).

7-14-4617 through 7-14-4620 reserved.

7-14-4621. General powers of parking commission. Each parking commission, subject to the limitations imposed by this part, shall have the following powers:

(1) to sue and be sued, have a seal, make and execute contracts and other instruments necessary or convenient to the exercise of its powers;

(2) to make and from time to time amend and repeal bylaws and rules, not inconsistent with this part, to carry into effect the powers and purposes thereof;

(3) to select and appoint or remove such officers, agents, counsel, and employees, permanent and temporary, as it may require and to determine their qualifications, duties, and compensation;

(4) to exercise all or any part or combination of the powers granted in this part;

(5) to do and perform any and all other acts and things necessary, convenient, desirable, or appropriate to carry out the provisions of this part.

History: En. Sec. 7, Ch. 223, L. 1951; amd. Sec. 4, Ch. 77, L. 1975; R.C.M. 1947, 11-3707(part).

7-14-4622. Powers of parking commission related to provision of parking services. For the purpose of offstreet parking, each parking commission, subject to the limitations imposed by this part, shall have the following powers:

(1) to purchase, lease, obtain option upon, or acquire by gift, grant, bequest, devise, or otherwise any real or personal property or any interest therein, together with any improvements thereon;

(2) to acquire by the exercise of the power of eminent domain any property in accordance with the applicable provisions of the law of eminent domain upon approval of the city council;

(3) to sell, lease, exchange, transfer, assign, or otherwise dispose of any real or personal property or any interest therein;

(4) to lay out, open, extend, widen, straighten, establish, or change the grade, in whole or in part, of public parking facilities and public rights-of-way necessary or convenient therefor;

(5) to insure or provide for the insurance of any real or personal property or operation of the commission against risks or hazards;

(6) to acquire, construct, rent, lease, maintain, and repair such real and personal property or any portion thereof, either on behalf of the commission or as an agent of the city, including the leasing of the operation thereof;

(7) to regulate onstreet parking where it remains in use, in coordination with offstreet parking, subject to traffic regulations imposed by the state.

History: En. Sec. 7, Ch. 223, L. 1951; amd. Sec. 4, Ch. 77, L. 1975; R.C.M. 1947, 11-3707(part).

Cross-References

Limitation on power of eminent domain, 7-14-4626.

Parking regulations, 7-14-4628.

Eminent domain, Title 70, ch. 30.

7-14-4623. Transfer of parking commission property to municipality. The legislative body of a city, at any time after the activation of a parking commission, may adopt by a two-thirds vote thereof a resolution transferring the property of the commission to the city. The city may, through such department as it may determine, exercise its powers in regard thereto by virtue of the constitution or this or other general law, but no such transfer shall be made in contravention of any covenant or agreement made with the holders of any revenue bonds of the commission theretofore issued and then outstanding.

History: En. Sec. 6, Ch. 223, L. 1951; R.C.M. 1947, 11-3706(part).

7-14-4624. Powers of commission related to financial management. Each parking commission, subject to the limitations imposed by this part, shall have the following powers:

(1) to receive, control, and order the expenditure of any and all money and funds pertaining to parking facilities or related properties, including, without limiting the generality of this provision:

(a) all revenues derived from operations of the commission;

(b) all money appropriated or made available by the city pursuant to this section or otherwise;

(c) the proceeds of all financial aid or assistance by the city, federal, or state governments;

(d) the proceeds of levied assessments;

(e) the proceeds of all revenue bonds issued pursuant to this part by the city for parking facilities;

(2) to invest any funds held in reserve or sinking funds or any funds not required for immediate disbursement in property or securities in which cities may legally invest funds subject to their control, but no such investment shall be made in contravention of any covenant or agreement made with the holders of any revenue bonds of the commission theretofore issued and then outstanding.

History: En. Sec. 7, Ch. 223, L. 1951; amd. Sec. 4, Ch. 77, L. 1975; R.C.M. 1947, 11-3707(part).

7-14-4625. Limitation on employment powers. The powers of the commission under 7-14-4621(3) shall be subject to all limitations and rights applicable to similar employment by the city unless the legislative body by resolution shall otherwise determine.

History: En. Sec. 7, Ch. 223, L. 1951; amd. Sec. 4, Ch. 77, L. 1975; R.C.M. 1947, 11-3707(part).

7-14-4626. Limitation on power of eminent domain. (1) Notwithstanding the provisions of 7-14-4622(2), no property of a state public body may be acquired without its consent.

(2) No existing parking facility shall be acquired by the exercise of the power of eminent domain by a commission or the city except after public hearing following notice of the date, time, place, and purpose of such hearing published once not less than 10 or more than 20 days prior to the date of such hearing.

History: (1)En. Sec. 7, Ch. 223, L. 1951; amd. Sec. 4, Ch. 77, L. 1975; Sec. 11-3707, R.C.M. 1947; (2)En. Sec. 8, Ch. 223, L. 1951; amd. Sec. 5, Ch. 77, L. 1975; Sec. 11-3708, R.C.M. 1974; R.C.M. 1947, 11-3707(part), 11-3708.

Cross-References

Eminent domain, Art. II, sec. 29, Mont. Const; Title 70, ch. 30.

7-14-4627. Leasing of surplus or uneconomical space for incidental purposes. (1) Subject to the limitations imposed by this part, when in the judgment of the commission it is convenient or necessary to permit such use in order to utilize properly such land as a parking facility, each parking commission shall have power to lease for incidental commercial purposes surplus space or space which it is not economical to use for parking purposes, as an incident to the operation of any parking facility.

(2) The city or parking commission shall be prohibited from operating any such additional, secondary, and incidental facilities. Such incidental use or uses must be secondary to the primary use as a parking facility. The commission or the city shall lease such space to private operators at rates comparable to the existing market rate for similar taxable space at the location.

(3) (a) Except as provided in subsection (3)(b), if a building is erected on such property for the purpose of parking motor vehicles, then such incidental use or uses of such building shall be confined to the street level and/or below street level of such building. Such incidental use or uses at street level may occupy the entire surface area of the property less that area required for vehicular and pedestrian movement if at least two higher levels, each of equal or greater area, are devoted entirely to parking purposes.

(b) Other provisions notwithstanding, the commission or the city may lease air rights above such building.

History: **En. Sec. 7, Ch. 223, L. 1951; amd. Sec. 4, Ch. 77, L. 1975; R.C.M. 1947, 11-3707(part).**

7-14-4628. Nature of onstreet parking regulations. The parking regulations issued pursuant to 7-14-4622(7) may include, without limiting the generality of this provision, the determination of:

(1) parking locations;
(2) variable parking durations;
(3) variable parking rate schedules; and
(4) enforcement policies and procedures.

History: **En. Sec. 7, Ch. 223, L. 1951; amd. Sec. 4, Ch. 77, L. 1975; R.C.M. 1947, 11-3707(part).**

7-14-4629. Manner of operating parking facility. (1) The commission or city may lease any project acquired by it under the provisions of this part to the highest responsible bidder after notice.

(2) If the commission or city shall, by resolution entered upon its minutes, find and determine that the purposes of this part will not be accomplished and the public interest will not be served by lease of any particular project for operation as a private parking project, the commission may lease such project to the city or the city may operate any such project itself as a municipal parking project, subject to the ordinances and rules of the city pertaining to municipal parking projects.

History: **En. Sec. 9, Ch. 223, L. 1951; amd. Sec. 3, Ch. 127, L. 1955; amd. Sec. 3, Ch. 401, L. 1973; R.C.M. 1947, 11-3709(part).**

7-14-4630. Notice for bids to lease parking facility. (1) The notice required by 7-14-4629(1) shall consist of the publication of a notice as provided in 7-1-2121 inviting bids.

(2) Such notice shall distinctly and specifically describe the project and the facilities in connection therewith which are to be leased, the period of time for which said project is to be leased, and the minimum rental to be paid under such lease.

History: **En. Sec. 9, Ch. 223, L. 1951; amd. Sec. 3, Ch. 127, L. 1955; amd. Sec. 3, Ch. 401, L. 1973; R.C.M. 1947, 11-3709(part); amd. Sec. 26, Ch. 349, L. 1985.**

7-14-4631. Compliance with land-use laws required. (1) All parking facilities of a commission shall be subject to the planning, zoning, sanitary, and building laws, ordinances, and regulations applicable to the locality in which the parking facility is situated.

(2) In the planning and location of any parking facility, a commission shall be subject to the relationship of the facility to any master plan or sections of a master plan for the development of the area in which the commission functions.

History: **En. Sec. 10, Ch. 223, L. 1951; amd. Sec. 4, Ch. 401, L. 1973; R.C.M. 1947, 11-3710(part).**

7-14-4632. Cooperation with other municipal offices. In order that there may be no unnecessary duplication of effort or expense, the commission shall have access, for the purposes of the commission, to the services and facilities of the city planning department, the city engineer, the police department, the fire department, and such other departments and offices of the city as may be appropriate therefor.

History: **En. Sec. 10, Ch. 223, L. 1951; amd. Sec. 4, Ch. 401, L. 1973; R.C.M. 1947, 11-3710(part).**

7-14-4633. Municipality authorized to collect in-lieu payments from parking commission — limitations. The legislative body may by resolution provide for a sum to be paid annually by the commission to the city. This sum shall not exceed the amount the commission would be required to pay in ad valorem taxes if it were a private entity owning the same property and shall not be paid from any funds needed for current operation, maintenance, debt service, or repairs or for compliance with any other provisions of indentures securing obligations of the commission.

History: **En. Sec. 10, Ch. 223, L. 1951; amd. Sec. 4, Ch. 401, L. 1973; R.C.M. 1947, 11-3710(part).**

7-14-4634. Charges for use of parking facilities. (1) The commission shall fix the rates, fees, and all other charges to be made for all projects, services, or facilities furnished, acquired, constructed, or completed under this part for the use thereof by any persons or public or private agencies utilizing such projects, services, or facilities. Subject to such contractual obligations as may be entered into by the commission and the holders of the revenue bonds issued under this part, the commission is authorized to change such rates, charges, and fees from time to time as conditions warrant.

(2) All rates, fees, and charges shall be at all times fixed to yield annual revenue which together with other revenue shall be equal to annual operating and maintenance expenses, including insurance costs, and all redemption payments and interest charges on the revenue bonds at any time issued and outstanding in connection with the project of which such facilities are a part as the same become due.

(3) The commission may provide that the rates, fees, and charges established are minimum rates, fees, and charges and subject to increase or decrease in accordance only with the terms of the indenture under which the revenue bonds were issued.

History: **En. Sec. 22, Ch. 223, L. 1951; R.C.M. 1947, 11-3722(part).**

7-14-4635. Authority to establish lien on charges for payment of bonds. The commission may provide that bond redemption and the interest payment shall constitute a first, direct, and exclusive charge and lien on all such fees, charges, and other revenues and interest thereon and sinking funds created therefrom received from the use and operation of the project for the acquisition, construction, or completion of which such revenue bonds were issued. All such fees and charges and other revenues, together with the interest thereon, shall constitute a trust fund for the security and payment of such bonds and shall not be used or pledged for any other purpose so long as such bonds (or any of them) are outstanding and unpaid.

History: **En. Sec. 22, Ch. 223, L. 1951; R.C.M. 1947, 11-3722(part).**

Cross-References

Liens, Title 71, ch. 3, part 1.

7-14-4636 through 7-14-4640 reserved.

7-14-4641. Authority to issue revenue bonds. The commission shall have power to issue revenue bonds in its name or in that of the city.

History: **En. Sec. 11, Ch. 223, L. 1951; amd. Sec. 5, Ch. 401, L. 1973; R.C.M. 1947, 11-3711(part).**

7-14-4642. Election required to issue revenue bonds. (1) The power to issue revenue bonds as provided in this part is not operative in any city until the legislative body, either at a general election or a special election held in conjunction with a regular or primary election, submits to the electors the question as to whether the legislative body, the commission, or both, are authorized to adopt the revenue bond method of financing projects provided for in this part.

(2) The question must be placed before the electors and notice must be given in the same manner as provided by law for referring ordinances of the city to the electors. The qualifications of electors are the same as those required for voting at municipal elections in the city for elective officers. The provisions relating to the qualifications of electors and manner of submission of the question to the electors for the purposes of this part are controlling, notwithstanding any provision of law to the contrary.

History: En. Sec. 3, Ch. 223, L. 1951; amd. Sec. 2, Ch. 127, L. 1955; R.C.M. 1947, 11-3703(part); amd. Sec. 53, Ch. 387, L. 1995.

Compiler's Comments

1995 Amendment: Chapter 387 in (1), near middle, inserted "held in conjunction with a regular or primary election"; and made minor changes in style.

7-14-4643. Sources of revenue for payment of revenue bonds. (1) No revenue bonds authorized by 7-14-4641 or the interest thereon shall be payable from or secured by a pledge or mortgage of any funds or properties of the city except those expressly enumerated in subsection (2).

(2) A commission may issue such types of revenue bonds as it may determine, including revenue bonds on which the principal and interest are payable:

(a) exclusively from the income and revenues of the parking facilities financed with the proceeds of such bonds;

(b) exclusively from the income and revenues of certain designated parking facilities whether or not they were financed in whole or in part with the proceeds of such bonds;

(c) from a charge on such revenues either prior or subordinate to the payment of any designated part or all of the costs of operation and maintenance and other expenses of such facilities;

(d) from any contributions or other financial assistance from the state or federal governments;

(e) from any or all onstreet parking meter revenues of the city which may be pledged and appropriated by or under authority of the legislative body for this purpose until the bonds are fully paid;

(f) from the collections of special assessments and interest thereon levied to finance the cost of parking facilities under any of the provisions of parts 41 through 45 of chapter 12 and part 47 of this chapter which may be pledged and appropriated by or under authority of the legislative body for the payment of revenue bonds issued under the provisions of this section and are not pledged for the payment of special improvement district bonds;

(g) from a reserve which may be established and agreed to be maintained by the transfer of such other city funds as may be pledged and appropriated, by or under authority of the legislative body, to meet deficiencies in the reserve until the bonds are fully paid;

(h) from the proceeds of sale upon foreclosure of any mortgage of an offstreet parking facility made by or under authority of the legislative body to secure the payment of any revenue bonds issued under this section, provided that no such mortgage shall be placed upon any property of the city or commission unless the cost of such property to the city has been paid from the proceeds of such bonds; or

(i) any combination of these sources.

History: (1)En. Sec. 11, Ch. 223, L. 1951; amd. Sec. 5, Ch. 401, L. 1973; Sec. 11-3711, R.C.M. 1947; (2)En. Sec. 12, Ch. 223, L. 1951; amd. Sec. 6, Ch. 401, L. 1973; Sec. 11-3712, R.C.M. 1947; R.C.M. 1947, 11-3711(part), 11-3712(part).

7-14-4644. Restrictions on use of reserve to make payments on revenue bonds. The funds from which the transfers authorized by 7-14-4643(2)(g) are made shall be reimbursed from the next collections of other revenues enumerated in 7-14-4643 which are not needed for full compliance with provisions of indentures securing all outstanding obligations of the commission. Nothing herein shall permit the levy of taxes at any time in excess of the deficiency then existing in the reserve, but such tax as may be needed, with other funds determined by the legislative body to be available to meet the deficiency, may and shall be levied and shall not be subject to any limitation of rate or amount provided in any other law.

History: En. Sec. 12, Ch. 223, L. 1951; amd. Sec. 6, Ch. 401, L. 1973; R.C.M. 1947, 11-3712(part).

7-14-4645. Power to determine terms and conditions of revenue bonds. (1) Each commission shall have power to determine by resolution, with reference to each issue of revenue bonds to be issued under this part, all the terms and conditions of such bonds and of the sale and issuance thereof and any and all matters necessary or appropriate to be determined in connection therewith, except only as such power is limited by or under the authority of express provisions of this part.

(2) Without excluding the exercising of any other powers under or in any way limiting the generality of the preceding general grant of power or in any way excluding or limiting the exercising of any or all other powers granted by this part, the general power granted by this section shall include and each such commission shall have and in its discretion may exercise the specific powers provided by this part.

History: En. Sec. 13, Ch. 223, L. 1951; R.C.M. 1947, 11-3713.

7-14-4646. Series or divisions of bonds permitted. (1) The commission may issue revenue bonds in series or may divide any issue into one or two or more divisions and fix different maturities or dates of such bonds, fix different rates of interest, or prescribe different terms and conditions for the bonds of the several series or divisions.

(2) It is not necessary that all bonds of the same authorized issue be of the same kind or character, have the same security, or be of the same interest rate, but the terms thereof shall in each case be provided for by the commission at or prior to the issue thereof.

(3) The commission may provide for successive issues or may provide for one maximum issue.

History: En. Sec. 16, Ch. 223, L. 1951; R.C.M. 1947, 11-3716.

7-14-4647. Interest on revenue bonds. Revenue bonds shall bear interest, payable annually or semiannually or in part annually and in part semiannually. Prior to the issuance of bonds, the commission may fix limitations or restrictions on the payment of interest.

History: En. Sec. 17, Ch. 223, L. 1951; amd. Sec. 20, Ch. 234, L. 1971; R.C.M. 1947, 11-3717(part).

7-14-4648. Payment of principal and interest. The commission may provide for the payment of the principal and interest of bonds at any place within or without the state in specified coin or currency of the United States.

History: En. Sec. 17, Ch. 223, L. 1951; amd. Sec. 20, Ch. 234, L. 1971; R.C.M. 1947, 11-3717(part).

7-14-4649. Maturity dates of revenue bonds. (1) Bonds may be serial bonds or sinking fund bonds, with such maturities as the commission may determine.

(2) Bonds shall bear dates prescribed by the commission. No bond by its terms shall mature in more than 40 years from its own date, and in the event any authorized issue is divided into two or more series or divisions, the maximum maturity date herein authorized shall be calculated from the date on the face of each bond separately, irrespective of the fact that different dates may be prescribed for the bonds of each separate series or division of any authorized issue.

History: En. Sec. 19, Ch. 223, L. 1951; R.C.M. 1947, 11-3719.

7-14-4650. Signatures on bonds. All of the signatures on said bonds and on the interest coupons thereof may be printed, lithographed, or engraved facsimiles except one signature of an officer of the city or commission or a representative of the trustee, which shall be manually affixed. If any of the officers whose signatures appear upon the bonds or coupons cease to be officers before delivery of the bonds or coupons, their signatures are nevertheless valid and of the same force and effect as if the officers had remained in office until the delivery of the bonds and coupons.

History: En. Sec. 18, Ch. 223, L. 1951; amd. Sec. 7, Ch. 401, L. 1973; R.C.M. 1947, 11-3718.

7-14-4651. Redemption of revenue bonds. Bonds may be callable upon such terms and conditions, upon such notice as the commission may determine, and upon the payment of the premium fixed by the commission in the proceedings for the issuance of the bonds. No bond is subject to call or redemption prior to its fixed maturity date unless the right to exercise such call is expressly stated on the face of the bond.

History: En. Sec. 17, Ch. 223, L. 1951; amd. Sec. 20, Ch. 234, L. 1971; R.C.M. 1947, 11-3717(part).

7-14-4652. Details relating to sale of revenue bonds. (1) The commission may fix terms and conditions for the public or private sale or other disposition of any authorized issue of bonds. The commission may sell bonds at not less than 95% of their par or face value.

(2) Interest on bonds may be paid out of the proceeds of the sale of the bonds during the actual construction of any project for the acquisition, construction, or completion of which the bonds have been issued and for a period of not to exceed 2 years thereafter, as provided for in the indenture.

History: En. Sec. 20, Ch. 223, L. 1951; amd. Sec. 8, Ch. 401, L. 1973; R.C.M. 1947, 11-3720(part).

7-14-4653. Temporary or interim bonds. Pending the actual issuance or delivery of revenue bonds, the commission may issue temporary or interim bonds, certificates, or receipts of any denomination whatsoever, with or without coupons, to be exchanged for definitive bonds when ready for delivery or to be paid at or before maturity, with accrued interest, from the proceeds of the definitive bonds.

History: En. Sec. 20, Ch. 223, L. 1951; amd. Sec. 8, Ch. 401, L. 1973; R.C.M. 1947, 11-3720(part).

7-14-4654. Exemption from certain state taxes. All such revenue bonds and the interest or income therefrom are exempt from all taxation in this state, other than gift, inheritance, and estate taxes.

History: En. Sec. 20, Ch. 223, L. 1951; amd. Sec. 8, Ch. 401, L. 1973; R.C.M. 1947, 11-3720(part).

7-14-4655. Authorization to enter into indentures. (1) The commission may enter into indentures providing for the aggregate principal amount, date or dates, maturities, interest rate, denominations, form, registration, transfer, and interchange of such bonds and coupons and the terms and conditions upon which the same shall be executed, issued, secured, sold, paid, redeemed, funded, and refunded.

(2) Each taker and subsequent holder of the bonds or coupons, whether the coupons are attached to or detached from the bonds, has recourse to and is bound by all of the provisions of the indenture to the extent that such provisions do not conflict with provisions stated in the bonds.

(3) Reference on the face of the bonds to such indenture by its date of adoption or the apparent date on the face thereof is sufficient to incorporate all of the provisions thereof into the body of the bonds and their appurtenant coupons.

History: En. Sec. 14, Ch. 223, L. 1951; amd. Sec. 11-107, Ch. 264, L. 1963; R.C.M. 1947, 11-3714(part).

7-14-4656. Contents of indenture. (1) An indenture pursuant to which bonds are issued may include such covenants and agreements on the part of the commission as the commission deems necessary or advisable for the better security of the bonds issued thereunder.

(2) An indenture may include any or all the following clauses relating to the bonds issued thereunder:

(a) requiring the commission to pay or cause to be paid punctually the principal of all such bonds and the interest thereon on the date or dates, at the place or places, and in the manner mentioned in such bonds and in the coupons appertaining thereto in accordance with such indenture;

(b) requiring the commission to make all repairs, renewals, and replacements necessary to the operation of the project and to keep it at all times in good repair;

(c) requiring the commission to preserve and protect the security of the bonds and the rights of the holders thereof and to warrant and defend such rights;

(d) requiring the commission to pay and discharge or cause to be paid and discharged from the funds available for that purpose all lawful claims for labor, materials, and supplies or other charges which if unpaid might become a lien or charge upon the revenues or any part thereof of any project acquired, constructed, or completed from the proceeds of the sale of the bonds or from other proceeds or upon any of the physical properties thereof which might impair the security of the bonds;

(e) limiting, restricting, or prohibiting any right, power, or privilege of the commission to mortgage or otherwise encumber, sell, lease, or dispose of any project constructed from the proceeds of the bonds or from other proceeds or to enter into any lease or agreement which impairs or impedes the operation of such project or any part thereof necessary to secure adequate revenues or which otherwise impairs or impedes the rights of the holders of the bonds with respect to such revenues;

(f) requiring the commission to fix, prescribe, and collect fees, tolls, rentals, or other charges in connection with the services and facilities furnished from the project acquired, constructed, or purchased from part or all of the proceeds of the bonds or from other proceeds, sufficient to pay the principal of and interest on the bonds as they become due and payable, together with all expenses of operation, maintenance and repair of the project, and with such additional sums as may be required for any sinking fund, reserve fund, or other special fund provided for the further security of such bonds or as a depreciation charge or other charge in connection with such project;

(g) requiring the commission to hold in trust the revenues pledged to the payment of such bonds and the interest thereon or to any reserve or other fund created for the further protection of the bonds and to apply such revenues or cause them to be applied only as provided in the indenture;

(h) limiting the power of the commission to apply the proceeds of the sale of any issue of bonds for the acquiring, constructing, or completing of any project or any part thereof or more than one of such projects;

(i) limiting the power of the commission to issue additional revenue bonds for the purpose of acquiring, constructing, or completing any improvement or any part thereof;

(j) requiring, specifying, or limiting the kind, amount, and character of insurance to be maintained by the commission on any project or any part thereof and the use and disposition of the proceeds of any such insurance thereafter collected;

(k) providing the events of default and the terms and conditions upon which any or all of the bonds then or thereafter issued may become or be declared due and payable prior to maturity and the terms and conditions upon which such declaration and its consequences may be waived;

(l) designating the rights, limitations, powers, and duties arising upon breach by the commission of any of the covenants, conditions, or obligations contained in any indenture;

(m) prescribing a procedure by which certain specified terms and conditions of the indenture may be subsequently amended or modified with the consent of the commission and the vote or written assent of the holders of a specified principal amount of the bonds issued and outstanding;

(n) providing for such other acts and matters as may be necessary or convenient or desirable in order to secure the bonds or to make the bonds more marketable.

History: (1), (2)(a) thru (2)(m)En. Sec. 14, Ch. 223, L. 1951; amd. Sec. 11-107, Ch. 164, L. 1963; Sec. 11-3714, R.C.M. 1947; (2)(n)En. Sec. 15, Ch. 223, L. 1951; Sec. 11-3715, R.C.M. 1947; R.C.M. 1947, 11-3714(part), 11-3715(part).

7-14-4657. Special provisions relating to indenture clause dealing with amendment and modification. (1) With respect to any clause providing for the modification or amendment of an indenture, the commission may agree that bonds held by the commission; by any department, political subdivision, or agency of the state; or by any public corporation, municipality, district, or political subdivision shall not be counted as outstanding bonds or be entitled to vote or assent but shall, nevertheless, be subject to any such modification or amendment.

(2) Such clause may provide for meetings of bondholders and for the manner in which the consent of the bondholders may be given. The clause shall specifically state the effect of such amendment or modification upon the rights of the holders of all of the bonds and interest coupons appertaining thereto, whether attached thereto or detached therefrom.

History: En. Sec. 14, Ch. 223, L. 1951; amd. Sec. 11-107, Ch. 264, L. 1963; R.C.M. 1947, 11-3714(part).

7-14-4658. Incorporation by reference of indenture in all contracts. Every contract entered into by the commission for the use of any project or the services or facilities thereof acquired, constructed, or completed from the proceeds of the sale of revenue bonds shall incorporate by reference the provisions of any indenture pursuant to which the bonds were issued.

History: En. Sec. 23, Ch. 223, L. 1951; amd. Sec. 9, Ch. 401, L. 1973; R.C.M. 1947, 11-3723(part).

7-14-4659. Funding and refunding bonds authorized. (1) The commission may provide for the issuance, sale, or exchange of refunding bonds for the purpose of redeeming or retiring any revenue bonds issued by the commission. Funding or refunding bonds may be issued in a principal amount sufficient to provide funds for the payment of all bonds to be funded or refunded thereby and, in addition, for the payment of all expenses incident to the calling, retiring, or paying of such outstanding bonds and the issuance of such funding or refunding bonds.

(2) All provisions of this part applicable to the issuance of revenue bonds are applicable to the funding or refunding bonds and to the issuance, sale, or exchange thereof.

History: Ap. p. Sec. 20, Ch. 223, L. 1951; amd. Sec. 8, Ch. 401, L. 1973; Sec. 11-3720, R.C.M. 1947; Ap. p. Sec. 21, Ch. 223, L. 1951; amd. Sec. 11-108, Ch. 264, L. 1963; Sec. 11-3721, R.C.M. 1947; R.C.M. 1947, 11-3720(part), 11-3721(part).

7-14-4660. Expenses which may be paid by means of funding or refunding bonds. The expenses referred to in 7-14-4659(1) include:

(1) the difference in amount between the par value of the funding or refunding bonds and any amount less than par for which the funding or refunding bonds are sold;

(2) any amount necessary to be made available for the payment of interest upon such funding or refunding bonds from the date of sale thereof to date of

payment of the bonds to be funded or refunded or to the date upon which the bonds to be funded or refunded will be paid pursuant to the call thereof or agreement with the holders thereof; and

(3) the premium, if any, necessary to be paid in order to call or retire the outstanding bonds and the interest accruing thereon to the date of the call or retirement.

History: En. Sec. 21, Ch. 223, L. 1951; amd. Sec. 11-108, Ch. 264, L. 1963; R.C.M. 1947, 11-3721(part).

7-14-4661. Bonds to be negotiable. All bonds issued under the provisions of this part shall be fully negotiable as provided by the Uniform Commercial Code—Investment Securities.

History: En. Sec. 21, Ch. 223, L. 1951; amd. Sec. 11-108, Ch. 264, L. 1963; R.C.M. 1947, 11-3721(part).

Cross-References

U.C.C. investment securities, Title 30, ch. 8.

7-14-4662. Bonds as legal investments. All bonds issued under this part shall be legal investments for both public and private funds.

History: En. Sec. 20, Ch. 223, L. 1951; amd. Sec. 8, Ch. 401, L. 1973; R.C.M. 1947, 11-3720(part).

7-14-4663. Authorization to designate trustee for bondholders. The commission may designate a bank or trust company as a trustee for the holders of bonds issued hereunder, may authorize the trustee to act on behalf of the holders of the bonds and to exercise and prosecute on behalf of the holders of the bonds such rights and remedies as may be available to the holders, and may fix and determine the conditions upon which any trustee shall receive, hold, or disburse any or all revenues collected for or on account of the bondholders. The authority may prescribe the duties and powers of such trustee with respect to the payment of principal and interest on the bonds, the redemption of the bonds, the registration and discharge from registration of the bonds, and the management of any sinking fund or other funds provided as security for the bonds.

History: En. Sec. 15, Ch. 223, L. 1951; R.C.M. 1947, 11-3715(part).

7-14-4664. Rights of obligees. (1) An obligee of a commission shall have the right in addition to all other rights which may be conferred on such obligee, subject only to any contractual restrictions binding upon such obligee:

(a) by mandamus, suit, action, or proceeding at law or in equity to compel said commission and the members, officers, agents, or employees thereof to perform each and every term, provision, and covenant contained in any contract of said commission with or for the benefit of such obligee and to require the carrying out of any or all such covenants and agreements of said commission and the fulfillment of all duties imposed upon said commission by this part;

(b) by suit, action, or proceeding in equity to enjoin any acts or things which may be unlawful or the violation of any of the rights of such obligee of said commission.

(2) A commission shall have power by its resolution, trust indenture, mortgage, lease, or other contract to confer upon any obligee holding or representing a specified amount in bonds the right (in addition to all rights that may otherwise be conferred), upon the happening of an event or default as

defined in such resolution or instrument, by suit, action, or proceeding in any court of competent jurisdiction:

(a) to cause possession of any parking facility or any part thereof to be surrendered to any such obligee;

(b) to obtain the appointment of a receiver of any parking facility of said commission or any part thereof and of the rents and profits therefrom;

(c) to require said commission and the members and employees thereof to account as if it and they were the trustees of an express trust.

History: (1)En. Sec. 23, Ch. 223, L. 1951; amd. Sec. 9, Ch. 401, L. 1973; Sec. 11-3723, R.C.M. 1947; (2)En. Sec. 24, Ch. 223, L. 1951; Sec. 11-3724, R.C.M. 1947; R.C.M. 1947, 11-3723(part), 11-3724(part).

7-14-4665. Role of appointed receiver. If a receiver is appointed pursuant to 7-14-4664(2)(b), he may enter and take possession of such parking facility or any part thereof and operate and maintain the same and collect and receive all fees, rents, revenues, or other charges thereafter arising therefrom. The receiver shall keep such money in a separate account or accounts and apply the same in accordance with the obligations of said commission as the court shall direct.

History: En. Sec. 24, Ch. 223, L. 1951; R.C.M. 1947, 11-3724(part).

7-14-4666. Exemption from execution for property of parking commission — exception. (1) Except as provided in subsection (2), all real property of a commission shall be exempt from levy and sale by virtue of an execution, and no execution or other judicial process shall issue against the same, nor shall any judgment against a commission be a charge or lien upon its real property.

(2) The provisions of this section shall not apply to or limit the right of obligees to foreclose or otherwise enforce any mortgage, deed of trust, or other encumbrance of a commission or the right of obligees to pursue any remedies for the enforcement of any pledge or lien given by a commission on its rents, fees, or revenues.

History: En. Sec. 25, Ch. 223, L. 1951; R.C.M. 1947, 11-3725.

Part 47

Pedestrian Malls and Offstreet Parking Facilities

7-14-4701. Authority to establish pedestrian malls. When the public interest or convenience requires, the governing body of a municipality may establish pedestrian malls.

History: En. Sec. 1, Ch. 89, L. 1913; re-en. Sec. 5225, R.C.M. 1921; re-en. Sec. 5225, R.C.M. 1935; amd. Sec. 1, Ch. 136, L. 1967; amd. Ch. 280, L. 1971; amd. Sec. 28, Ch. 566, L. 1977; R.C.M. 1947, 11-2201(part).

7-14-4702. Control of traffic on pedestrian malls. When the public interest or convenience requires, the governing body of a municipality may prohibit, in whole or in part, vehicular traffic on a pedestrian mall.

History: En. Sec. 1, Ch. 89, L. 1913; re-en. Sec. 5225, R.C.M. 1921; re-en. Sec. 5225, R.C.M. 1935; amd. Sec. 1, Ch. 136, L. 1967; amd. Ch. 280, L. 1971; amd. Sec. 28, Ch. 566, L. 1977; R.C.M. 1947, 11-2201(part).

7-14-4703. Provision for payment of damages due to creation of pedestrian mall. When the public interest or convenience requires, the governing body of a municipality may pay, from general funds of the municipality or other available money or from the proceeds of assessments levied on lands benefited by the establishment of a pedestrian mall, the damages, if any, allowed or awarded to any property owner by reason of the establishment of a pedestrian mall. The resolution of intention must contain a statement that an assessment will be levied to pay the whole or a stated portion of such damages, if any, allowed or awarded to any property owner by reason of the establishment of such pedestrian mall.

History: En. Sec. 1, Ch. 89, L. 1913; re-en. Sec. 5225, R.C.M. 1921; re-en. Sec. 5225, R.C.M. 1935; amd. Sec. 1, Ch. 136, L. 1967; amd. Ch. 280, L. 1971; amd. Sec. 28, Ch. 566, L. 1977; R.C.M. 1947, 11-2201(part).

7-14-4704. Construction of improvements related to pedestrian malls. When the public interest or convenience requires, the governing body of a municipality may construct improvements on public streets that have been or will be established as a pedestrian mall, including but not limited to paving, sidewalks, curbs, sewers, covered walkways or areas, air conditioning, drainage works, street lighting facilities, fire protection facilities, flood protection facilities, water distribution facilities, vehicular parking areas, retaining walls, landscaping, tree planting, statuary, fountains, decorative structures, benches, restrooms, child care facilities, display facilities, information booths, public assembly facilities, and other structures, works, or improvements necessary or convenient to serve members of the public using such pedestrian mall, including the reconstruction or relocation of existing municipally owned works, improvements, or facilities on such streets. The improvements or structures may be attached to abutting private buildings or structures provided that the improvements or structures are located on public property.

History: En. Sec. 1, Ch. 89, L. 1913; re-en. Sec. 5225, R.C.M. 1921; re-en. Sec. 5225, R.C.M. 1935; amd. Sec. 1, Ch. 136, L. 1967; amd. Ch. 280, L. 1971; amd. Sec. 28, Ch. 566, L. 1977; R.C.M. 1947, 11-2201(part).

7-14-4705 through 7-14-4710 reserved.

7-14-4711. Authorization for improvement districts for pedestrian malls, offstreet parking, parkings, and parkways. (1) An improvement district may be formed for the sole purpose of operating, maintaining, repairing, and improving pedestrian malls, offstreet parking facilities, and parkings and parkways.

(2) Subject to the powers granted and the limitations contained in this part, the powers and duties of the municipality and the procedure to be followed are as provided in parts 41 through 44 of chapter 12 for other types of special improvement districts.

History: En. Sec. 1, Ch. 89, L. 1913; re-en. Sec. 5225, R.C.M. 1921; re-en. Sec. 5225, R.C.M. 1935; amd. Sec. 1, Ch. 136, L. 1967; amd. Ch. 280, L. 1971; amd. Sec. 28, Ch. 566, L. 1977; R.C.M. 1947, 11-2201(3), (4).

Cross-References

Leasing offstreet parking facilities, 7-14-4731.

7-14-4712. Procedure upon receipt of petition from all property owners within proposed district. If a petition for the formation of an improvement district under the provisions of 7-14-4711 is presented to the governing body purporting to be signed by all of the real property owners in the proposed district, exclusive of mortgagees and other lienholders, the governing body, after verifying the ownership and making a finding of the fact, shall adopt a resolution of intention to order the improvement, as provided in 7-12-4104 and 7-12-4117, and may adopt the resolution ordering the improvement pursuant to 7-14-4711 through 7-14-4723 without the publication of the resolution of intention provided for in 7-12-4106. However, if special improvement district bonds are proposed to be issued and secured by the revolving fund, the requirements of 7-12-4106 through 7-12-4114, 7-12-4169, 7-12-4189, 7-12-4222, 7-12-4223, and 7-12-4225 must be met by the governing body.

History: En. Sec. 1, Ch. 89, L. 1913; re-en. Sec. 5225, R.C.M. 1921; re-en. Sec. 5225, R.C.M. 1935; amd. Sec. 1, Ch. 136, L. 1967; amd. Ch. 280, L. 1971; amd. Sec. 28, Ch. 566, L. 1977; R.C.M. 1947, 11-2201(5); amd. Sec. 13, Ch. 229, L. 1995.

Compiler's Comments

1995 Amendment: Chapter 229 near end of first sentence, after "pursuant to", substituted "7-14-4711 through 7-14-4723" for "the following provisions" and after "publication" deleted "and posting"; inserted second sentence concerning bonds secured by revolving fund; and made minor changes in style. Amendment effective March 24, 1995.

Applicability: Section 16, Ch. 229, L. 1995, provided: "[This act] applies to all special improvement districts and rural special improvement districts created after [the effective date of this act] and, at the option of the city, town, or county, to bonds and warrants issued after [the effective date of this act], if the district was created before [the effective date of this act]." Effective March 24, 1995.

7-14-4713. Estimates of expenses — tax levy. (1) The governing body shall:

(a) make annual statements and estimates of the expenses of the district which shall be provided for by the levy and collection of ad valorem taxes upon the taxable value of all the real and personal property in the district;

(b) publish notice thereof; and

(c) have hearings on the statements and estimates and adopt them as provided for incorporated cities and towns by 7-12-4104, 7-12-4106, 7-12-4110, 7-12-4112, 7-12-4113, and 7-12-4117.

(2) The governing body, on or before the second Monday in August of each year, shall fix, levy, and assess the amount to be raised by ad valorem taxes upon all of the property of the district. All statutes providing for the levy and collection of state and county taxes, including the collection of delinquent taxes and sale of property for nonpayment of taxes, shall be applicable to the district taxes provided for under this section.

History: En. Sec. 1, Ch. 89, L. 1913; re-en. Sec. 5225, R.C.M. 1921; re-en. Sec. 5225, R.C.M. 1935; amd. Sec. 1, Ch. 136, L. 1967; amd. Ch. 280, L. 1971; amd. Sec. 28, Ch. 566, L. 1977; R.C.M. 1947, 11-2201(6).

7-14-4714. Manner of financing district for pedestrian mall or offstreet parking. An improvement district formed for the purpose of establishing a pedestrian mall or offstreet parking may be financed in accordance with the provisions of 7-12-4161 through 7-12-4168, 7-12-4173, and 7-12-4175 and in accordance with the methods of financing set forth in Title 7, chapter 7, part 44.

History: En. Sec. 1, Ch. 89, L. 1913; re-en. Sec. 5225, R.C.M. 1921; re-en. Sec. 5225, R.C.M. 1935; amd. Sec. 1, Ch. 136, L. 1967; amd. Ch. 280, L. 1971; amd. Sec. 28, Ch. 566, L. 1977; R.C.M. 1947, 11-2201(7); amd. Sec. 6, Ch. 453, L. 1993.

7-14-4715. Authorization for issuance of bonds by improvement districts for pedestrian malls or offstreet parking. An improvement district formed for pedestrian malls or offstreet parking shall be authorized to issue improvement bonds.

History: **En. 11-2214.1 by Sec. 2, Ch. 136, L. 1967; R.C.M. 1947, 11-2214.1(part).**

7-14-4716. Procedure to issue bonds. (1) When the governing body determines that improvement bonds are to be issued, it shall so declare in the resolution of intention for the work and shall specify the rate of interest which the bonds will bear. A description of the bonds, including the manner of repayment, shall be inserted in all notices of the proceedings required to be published or posted. A like description of the bonds shall be included in the warrant.

(2) All other proceedings for the work up to and including the approval of the assessment by the governing body and including delivery of the assessment to the contractor, demand of payment of the several assessments, and the return and record thereof shall be in all respects as provided in this part and parts 41 and 42 of chapter 12.

History: **En. 11-2214.1 by Sec. 2, Ch. 136, L. 1967; R.C.M. 1947, 11-2214.1(a), (b); amd. Sec. 13, Ch. 253, L. 1979.**

7-14-4717. List of unpaid assessments. After expiration of the prescribed time from the date of the warrant and after the treasurer has recorded the return, he shall make and certify to the clerk a complete list of all unpaid assessments which amount to $25 or over upon any assessment.

History: **En. 11-2214.2 by Sec. 3, Ch. 136, L. 1967; amd. Sec. 14, Ch. 234, L. 1971; R.C.M. 1947, 11-2214.2(a).**

7-14-4718. Removal of property from list. (1) If any person before certification of the list to the clerk presents to the treasurer his affidavit that he is the owner of a lot in the list, accompanied by the certificate of a searcher of records that the person is the owner of record, and notifies the treasurer in writing that he desires no bond to be issued for the assessment upon the lot, then the assessment shall not be included in the list and shall remain collectible as provided by this part and parts 41 and 42 of chapter 12.

(2) Omission to file the notice shall bar any defense against the bonds except the defense that the governing body did not have authority to issue the bonds.

History: **En. 11-2214.2 by Sec. 3, Ch. 136, L. 1967; amd. Sec. 14, Ch. 234, L. 1971; R.C.M. 1947, 11-2214.2(b).**

7-14-4719. Presentation of list to governing body — issuance of bonds. The clerk shall present the list to the governing body at its next meeting, and the body shall thereupon by resolution direct improvement bonds to be issued to the contractor for the amount of the assessments remaining unpaid, prescribing the number and denomination of the bonds and the times when payable. The resolution shall also fix the place, if any, other than the office of the treasurer at which the bonds and the interest thereon shall be payable.

History: **En. 11-2214.2 by Sec. 3, Ch. 136, L. 1967; amd. Sec. 14, Ch. 234, L. 1971; R.C.M. 1947, 11-2214.2(part).**

7-14-4720. Details of bonds. (1) The number and denomination of the bonds and the times when payable shall be fixed so that an approximately equal amount of the total sum shall be paid each year until the whole amount is paid, not exceeding 25 years and 3 months from the date of the bonds, but any fractional amounts may be added to the amount due in any year so that the amounts due in all other years shall be in equal multiples of $100 each. Except for a bond to represent any odd amount due in any year, the denominations of the bonds shall be fixed at $100 or some multiple thereof not exceeding $1,000.

(2) The bonds shall be issued as of the date of the warrant and shall bear interest from such date at the rate specified in the resolution of intention. They shall have semiannual interest coupons attached, the first of which shall be payable on January 1 or July 1, as the case may be, occurring 90 days after the date of the bond and shall be for the interest accrued at that time.

(3) The due date of all bonds shall be January 1 in the years in which they respectively become due.

History: En. 11-2214.2 by Sec. 3, Ch. 136, L. 1967; amd. Sec. 14, Ch. 234, L. 1971; R.C.M. 1947, 11-2214.2(part).

7-14-4721. Assessments converted to bond liability. (1) The treasurer, at the time he certifies the list of unpaid assessments to the clerk, shall write the word "certified" on the record of the assessment opposite each assessment included in the list, and thereupon all assessments of $25 or over shall cease to be payable in cash and shall thereafter be payable only in equal annual installments on December 1 in each year preceding January 1 on which the bonds become due. The governing body may provide a plan whereby the annual installment may be collected in partial payments prior to the time the installment is due, and the lien of each assessment on the property assessed shall continue and remain in full force and effect for 2 years after the last installment on the assessment becomes due or until the assessment is fully paid.

(2) The number of installments in which the assessment is payable shall correspond to the number of years in which there are bonds to be paid, but the total number of installments shall not exceed 25.

History: En. 11-2214.3 by Sec. 4, Ch. 136, L. 1967; R.C.M. 1947, 11-2214.3(a), (c).

7-14-4722. Treatment of installments due on bonds. (1) An uncollected installment shall be added to the succeeding installment and, together with interest and penalties, shall be payable therewith.

(2) All assessments of $25 or more not paid before the certification of assessments unpaid to the clerk shall bear interest from the date of the warrant at the same rate as that specified for the bonds in the resolution of intention. The interest shall be payable on June 1 and December 1 of each year immediately before the interest becomes due on the bonds, but the governing body may provide a plan whereby the interest may be collected in partial payments prior to the date it becomes due.

History: En. 11-2214.3 by Sec. 4, Ch. 136, L. 1967; R.C.M. 1947, 11-2214.3(b), (d).

7-14-4723. Advance payment of installments. The governing body may provide for receiving payment of the installments of the assessment before they become due and using the proceeds thereof in redeeming such bonds as may be presented for redemption by the owners thereof or for investing the proceeds in improvement bonds for other work or other satisfactory investment, but no investment of such funds shall be made so as to prejudice the prompt payment of the bonds on the date they become due.

History: **En. 11-2214.3 by Sec. 4, Ch. 136, L. 1967; R.C.M. 1947, 11-2214.3(e).**

7-14-4724 through 7-14-4730 reserved.

7-14-4731. Authorization for improvement districts to lease and operate offstreet parking facilities. (1) In addition to the purposes for which an improvement district may be formed under the provisions of 7-12-4301, 7-14-4701, and 7-14-4711, an improvement district may be formed for the sole purpose of leasing real property to be used as offstreet parking sites; for the improvement of such offstreet parking sites by grading, paving, ordering the installation of lighting poles, wires, conduits, lamps, standards, and other appliances for the purpose of lighting and beautifying the offstreet parking areas and entrances thereto; and for the operation and maintenance thereof.

(2) Subject to the powers granted and the limitations contained in this section, 7-12-4131, 7-12-4301(2), 7-12-4327, 7-14-4701 through 7-14-4704, 7-14-4711 through 7-14-4714, and 7-14-4733 through 7-14-4737, the powers and duties of the governing body of the municipality and the procedure to be followed shall be as provided in parts 41 and 42 of chapter 12 for other types of special improvement districts.

(3) No improvement district formed under provisions of this section shall be authorized to engage in any activity other than the leasing of offstreet parking sites and the improvement, operation, and maintenance of same.

(4) The formation of an improvement district for offstreet parking purposes under the provisions of this section shall not prevent the subsequent establishment of improvement districts for any other purpose authorized by law.

History: **En. 11-2214.4 by Sec. 5, Ch. 136, L. 1967; R.C.M. 1947, 11-2214.4(part).**

7-14-4732. Procedure upon receipt of petition for creation of offstreet parking district. (1) If a petition for the formation of an improvement district for the leasing, improvement, or operation and maintenance of an offstreet parking site is presented to the governing body purporting to be signed by all of the real property owners in the proposed district, exclusive of mortgagees and other lienholders, the governing body, after verifying the ownership and making a finding of fact, shall adopt a resolution of intention to order the improvement, pursuant to the provisions of 7-12-4104 and 7-12-4117, and may adopt the resolution ordering the improvement pursuant to 7-12-4114 without the publication of the resolution of intention provided for in 7-12-4106. However, if special improvement district bonds are proposed to be issued and secured by the revolving fund, the requirements of 7-12-4106 through 7-12-4114, 7-12-4169, 7-12-4189, 7-12-4222, 7-12-4223, and 7-12-4225 must be met by the governing body.

(2) If a petition for the formation of an improvement district for offstreet parking purposes and for the leasing of sites and improvement, operation, and maintenance of sites is signed by the owners of a majority of the frontage of the property proposed to be contained within the limits of the assessment district and is presented to the governing body, the governing body shall adopt a

resolution of intention ordering the proposed improvement and publish the resolution pursuant to the provisions of 7-12-4104 and 7-12-4106.

History: En. 11-2214.5 by Sec. 6, Ch. 136, L. 1967; R.C.M. 1947, 11-2214.5; amd. Sec. 14, Ch. 229, L. 1995.

Compiler's Comments

1995 Amendment: Chapter 229 in (1), near end of first sentence after "publication", deleted "and posting" and inserted second sentence concerning bonds secured by revolving fund; near end of (2) substituted "publish the resolution" for "cause the same to be published and posted"; and made minor changes in style. Amendment effective March 24, 1995.

Applicability: Section 16, Ch. 229, L. 1995, provided: "[This act] applies to all special improvement districts and rural special improvement districts created after [the effective date of this act] and, at the option of the city, town, or county, to bonds and warrants issued after [the effective date of this act], if the district was created before [the effective date of this act]." Effective March 24, 1995.

7-14-4733. Authority to enter lease agreements. (1) After the formation of a special improvement district pursuant to the provisions of 7-12-4104 and 7-12-4106 as modified in 7-14-4732 and after having acquired jurisdiction to order the improvement pursuant to 7-12-4114, the governing body may:

(a) in addition to ordering the improvements set forth in 7-14-4731(1), enter into lease agreements for property within the limits of the assessment district for use as offstreet parking sites, which lease agreements shall be upon such terms and conditions as the governing body may determine and which lease agreements may provide that same may be terminated by either party upon 6 months' prior written notice; and

(b) contract for the operation and maintenance thereof.

(2) The governing body may enter into such lease agreements and contract for the operation and maintenance of such offstreet parking sites without the publication of notice and invitation for bids.

History: En. 11-2214.4 by Sec. 5, Ch. 136, L. 1967; R.C.M. 1947, 11-2214.4(c).

7-14-4734. Expense estimate — assessments and tax levy. (1) The governing body shall:

(a) make annual statements and estimates of the expenses of the district which shall be provided for by the levy and collection of ad valorem taxes upon the assessed value of all the real and personal property in the district;

(b) publish notice thereof; and

(c) have hearings thereon and adopt an ordinance thereon at the times and in the manner provided for incorporated cities and towns by the applicable portions of 7-12-4175.

(2) The governing body, on or before the second Monday in August of each year, shall fix, levy, and assess the amount to be raised by ad valorem taxes upon all of the property of the district. All statutes providing for the levy and collection of state and county taxes, including the collection of delinquent taxes and sale of property for nonpayment of taxes, are applicable to the district taxes provided for under this section.

(3) No assessment for district purposes against the property within such district may exceed 12 mills upon each dollar of taxable valuation in any tax year.

History: En. 11-2214.4 by Sec. 5, Ch. 136, L. 1967; R.C.M. 1947, 11-2214.4(part); amd. Sec. 14, Ch. 253, L. 1979.

7-14-4735. Prohibition on issuance of improvement bonds. An improvement district formed under provisions of 7-14-4731 shall not be authorized to issue improvement bonds.

History: En. 11-2214.4 by Sec. 5, Ch. 136, L. 1967; R.C.M. 1947, 11-2214.4(part).

7-14-4736. Participation by municipality. If the municipality is willing to participate in the cost of leasing, improving, operating, or maintaining the offstreet parking sites in an improvement district established pursuant to 7-14-4731, the governing body may by resolution summarily order such participation, and the amount of any such participation shall not be subject to the limitations of 7-12-4102, 7-12-4103, and 7-12-4132.

History: En. 11-2214.4 by Sec. 5, Ch. 136, L. 1967; R.C.M. 1947, 11-2214.4(part).

7-14-4737. Deletion of territory from offstreet parking district. If in the opinion of the governing body any portion of the territory of a district formed under 7-14-4731 is no longer benefited by the offstreet parking sites provided, the governing body may by resolution summarily delete from the district formed under 7-14-4731 any such area and may form a new district from the balance of the original district formed under 7-14-4731.

History: En. 11-2214.4 by Sec. 5, Ch. 136, L. 1967; R.C.M. 1947, 11-2214.4(h).

Part 48
Air Transportation

7-14-4801. Acquisition of landing fields and parking areas for aircraft. The city or town council has power to acquire by lease, gift, purchase, or condemnation lots or lands for landing fields or parking areas for aircraft, within or without the corporate limits of the municipality, and to exercise municipal jurisdiction over the lots or lands, where such lots or lands or any portion thereof are without the corporate limits of the municipality, to the same extent as though they were within such corporate limits.

History: En. Subd. 84, Sec. 5039, R.C.M. 1921; amd. Sec. 1, Ch. 115, L. 1925; amd. Sec. 1, Ch. 20, L. 1927; re-en. Sec. 5039.83, R.C.M. 1935; amd. Sec. 1, Ch. 147, L. 1947; amd. Sec. 1, Ch. 27, L. 1965; R.C.M. 1947, 11-986(part).

Cross-References

Municipal airports, Title 67, ch. 10.

CHAPTER 15
HOUSING AND CONSTRUCTION

Parts 1 through 20 reserved

Part 21 — County Housing Authorities

7-15-2101. Findings and policy.
7-15-2102. Petition to create county housing authority — hearing and notice.
7-15-2103. Notice of hearing on petition.
7-15-2104. Hearing on petition.
7-15-2105. Decision of board of county commissioners.
7-15-2106. Criteria for determining if unsafe or unsanitary dwelling accommodations exist.
7-15-2107. Application for incorporation.

7-15-2108. Processing of application by secretary of state.
7-15-2109. Effect of filing and recording application.
7-15-2110. Presumption of regularity in creation of county housing authority.
7-15-2111. Area of operation of county housing authority — inclusion of municipalities.
7-15-2112. Administration and operation of county housing authority — application of municipal laws.
7-15-2113. County housing authority to be nonprofit.
7-15-2114. Certain laws controlling.
7-15-2115. Authorization for payment of rentals in lieu of taxes.
7-15-2116 through 7-15-2119 reserved.
7-15-2120. Authorization for counties to furnish assistance in the rehabilitation of private dwellings.
7-15-2121. Authorization for rural housing projects.
7-15-2122. Operation of rural housing projects.
7-15-2123. Housing applications by farmers.
7-15-2124. Definition of term farmers of low income.

Parts 22 through 40 reserved

Part 41 — General Provisions Related to Municipal Housing and Construction

7-15-4101. Numbering of houses and lots.
7-15-4102. Findings and policy with regard to unsanitary and unsafe private dwellings.
7-15-4103. Authorization for municipalities to furnish assistance in the rehabilitation of private dwellings.
7-15-4104 through 7-15-4120 reserved.
7-15-4121. Adoption of building, electrical, and plumbing codes.
7-15-4122. Repealed.
7-15-4123. Inspection of building materials.
7-15-4124. Entrances and safety exits for buildings.
7-15-4125. Repair of damaged structures.
7-15-4126. Regulation of partition fences and party walls.

Part 42 — Urban Renewal

7-15-4201. Short title.
7-15-4202. Existence of blighted areas and resulting problems — statement of policy.
7-15-4203. Need for redevelopment and rehabilitation of blighted areas.
7-15-4204. Interpretation.
7-15-4205. Scope.
7-15-4206. Definitions.
7-15-4207. Prohibition against discrimination.
7-15-4208. Encouragement of private enterprise.
7-15-4209. Development of workable urban renewal program.
7-15-4210. Resolution of necessity required to utilize provisions of part.
7-15-4211. Preparation of comprehensive development plan for municipality.
7-15-4212. Preparation of urban renewal plan.
7-15-4213. Review of urban renewal plan by planning commission.
7-15-4214. Hearing on urban renewal plan required.
7-15-4215. Notice of hearing on urban renewal plan.
7-15-4216. Requirements for approval of urban renewal plans and projects.
7-15-4217. Criteria for approval of urban renewal project.
7-15-4218. Voter approval of urban renewal plan required when general obligation bonds to be used.
7-15-4219. Effect of approval of urban renewal project.
7-15-4220. Use of neighborhood development program to implement urban renewal activities.
7-15-4221. Modification of urban renewal project plan.
7-15-4222 through 7-15-4230 reserved.
7-15-4231. Exercise of powers related to urban renewal.
7-15-4232. Authorization to assign urban renewal powers to municipal departments or to create urban renewal agency.

7-15-4233. Powers which may be exercised by urban renewal agency or authorized department.
7-15-4234. Urban renewal agency to be administered by appointed board of commissioners.
7-15-4235. Restrictions on agency commissioners holding other public office.
7-15-4236. Conduct of business.
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7-15-4238. Employment of necessary staff.
7-15-4239. Control of conflict of interest.
7-15-4240. Misconduct in office.
7-15-4241 through 7-15-4250 reserved.
7-15-4251. General powers of municipalities in connection with urban renewal.
7-15-4252. Prevention and elimination of urban blight.
7-15-4253. Relocation of displaced families.
7-15-4254. Municipal power in the preparation of various plans.
7-15-4255. Authority to provide or contract for services related to urban renewal.
7-15-4256. Restriction on operation of certain utility services by municipality.
7-15-4257. Authority to enter private property.
7-15-4258. Acquisition and administration of real and personal property.
7-15-4259. Exercise of power of eminent domain.
7-15-4260. Exemption from levy and sale for certain property.
7-15-4261. Exemption from taxation for certain property.
7-15-4262. Disposal of municipal property in urban renewal areas.
7-15-4263. Procedure to dispose of property to private persons.
7-15-4264. Obligations of transferees of municipal property in urban renewal area.
7-15-4265. Presumption of regularity in transfer of title.
7-15-4266. Temporary use of municipal property in urban renewal area.
7-15-4267. Cooperation by public bodies.
7-15-4268 through 7-14-4280 reserved.
7-15-4281. Financial authority in connection with urban renewal.
7-15-4282. Authorization for tax increment financing.
7-15-4283. Definitions related to tax increment financing.
7-15-4284. Filing of tax increment provisions of urban renewal plan or industrial district ordinance.
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7-15-4292. Termination of tax increment financing — exception — reduction in tax increment distribution.
7-15-4293. Adjustment of base taxable value following change of law.
7-15-4294 through 7-14-4296 reserved.
7-15-4297. Short title.
7-15-4298. Legislative findings.
7-15-4299. Industrial districts.

Part 43 — Urban Renewal Continued

7-15-4301. Authorization to issue urban renewal bonds, industrial infrastructure development bonds, and refunding bonds.
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Part 44 — Municipal Housing Authorities

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Part 45 — Municipal Housing Authorities Continued

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7-15-4529. General remedies of an obligee of a housing authority.
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Parts 1 through 20 reserved

Part 21

County Housing Authorities

7-15-2101. Findings and policy. It is hereby declared that:

(1) unsanitary or unsafe dwelling accommodations exist in rural areas throughout the state, and such unsafe or unsanitary conditions arise from overcrowding and concentration of population, the obsolete and poor conditions of buildings, improper planning, excessive land coverage, lack of proper light, air, and space, unsanitary design and arrangement, lack of proper sanitary facilities, and the existence of conditions which endanger life or property by fire and other causes;

(2) in such rural areas, many persons of low income are forced to reside in unsanitary or unsafe dwelling accommodations;

(3) in such rural areas, there is a lack of safe or sanitary dwelling accommodations available to all the inhabitants thereof, and consequently, many persons of low income are forced to occupy overcrowded and congested dwelling accommodations;

(4) these conditions cause an increase in and spread of disease and crime and constitute a menace to the health, safety, morals, and welfare of the citizens of the state and impair economic values;

(5) these conditions cannot be remedied by the ordinary operations of private enterprise;

(6) the clearance, replanning, and reconstruction of the areas in which unsanitary or unsafe housing conditions exist and the providing of safe and sanitary dwelling accommodations for persons of low income are public uses and purposes for which public money may be spent and private property acquired;

(7) it is in the public interest that work on such projects be instituted as soon as possible; and

(8) the necessity for the provisions hereinafter enacted is hereby declared, as a matter of legislative determination, to be in the public interest.

History: En. Sec. 2, Ch. 140, L. 1935; re-en. Sec. 5309.2, R.C.M. 1935; amd. Sec. 1, Ch. 153, L. 1941; R.C.M. 1947, 35-102(part).

7-15-2102. Petition to create county housing authority — hearing and notice. (1) Any 25 residents of a county may file a petition with the county clerk setting forth that there is a need for a housing authority to function in the county.

(2) Upon the filing of such a petition, the county clerk shall give notice of the time, place, and purpose of a public hearing at which the board of county commissioners will determine the need for an authority in the county.

History: En. Sec. 5, Ch. 153, L. 1941; re-en. Sec. 5309.27A, R.C.M. 1935; amd. Sec. 1, Ch. 281, L. 1971; R.C.M. 1947, 35-128(part).

7-15-2103. Notice of hearing on petition. The notice required by 7-15-2102 shall be given at the county's expense by publishing a notice as provided in 7-1-2121.

History: En. Sec. 5, Ch. 153, L. 1941; re-en. Sec. 5309.27A, R.C.M. 1935; amd. Sec. 1, Ch. 281, L. 1971; R.C.M. 1947, 35-128(part); amd. Sec. 27, Ch. 349, L. 1985.

7-15-2104. Hearing on petition. Upon the date fixed for said hearing held upon notice as provided in 7-15-2102 and 7-15-2103, an opportunity to be heard shall be granted to all residents and taxpayers of the county and to all other interested persons.

History: En. Sec. 5, Ch. 153, L. 1941; re-en. Sec. 5309.27A, R.C.M. 1935; amd. Sec. 1, Ch. 281, L. 1971; R.C.M. 1947, 35-128(part).

7-15-2105. Decision of board of county commissioners. (1) After such a hearing, the board of county commissioners shall determine:

(a) whether unsanitary or unsafe inhabited dwelling accommodations exist in the county; and/or

(b) whether there is a lack of safe or sanitary dwelling accommodations in the county available for all the inhabitants thereof.

(2) If it shall determine that either or both of the above-enumerated conditions exist, the board shall adopt a resolution so finding (which need not go into any detail other than the mere finding) and shall thereupon appoint, as hereinafter provided, five commissioners to act as an authority.

(3) If the board, after a hearing as aforesaid, shall determine that neither of the above-enumerated conditions exist, it shall adopt a resolution denying the petition. After 3 months shall have expired from the date of the denial of any such petition, subsequent petitions may be filed as aforesaid and new hearings and determinations made thereon.

History: En. Sec. 5, Ch. 153, L. 1941; re-en. Sec. 5309.27A, R.C.M. 1935; amd. Sec. 1, Ch. 281, L. 1971; R.C.M. 1947, 35-128(part).

7-15-2106. Criteria for determining if unsafe or unsanitary dwelling accommodations exist. In determining whether dwelling accommodations are unsafe or unsanitary, the board of county commissioners shall take into consideration the following:

(1) the physical condition and age of the buildings;
(2) the degree of overcrowding;
(3) the percentage of land coverage;
(4) the light and air available to the inhabitants of such dwelling accommodations;
(5) the size and arrangement of the rooms;
(6) the sanitary facilities; and
(7) the extent to which conditions exist in such buildings which endanger life or property by fire or other causes.

History: En. Sec. 5, Ch. 153, L. 1941; re-en. Sec. 5309.27A, R.C.M. 1935; amd. Sec. 1, Ch. 281, L. 1971; R.C.M. 1947, 35-128(part).

7-15-2107. Application for incorporation. (1) The commissioners of the authority shall present to the secretary of state an application signed by them which shall set forth (without any detail other than the mere recital):

(a) that a notice has been given and public hearing has been held as aforesaid and that the board of county commissioners made the aforesaid determination after such hearing and appointed them as commissioners;

(b) the name and official residence of each of the commissioners, together with a certified copy of the appointment evidencing their right to office, the date and place of induction into and taking oath of office, and that they desire the housing authority to become a public body and a body corporate and politic under this part;

(c) the term of office of each of the commissioners;
(d) the name which is proposed for the corporation; and
(e) the location of the principal office of the proposed corporation.

(2) The application shall be subscribed and sworn to by each of said commissioners before an officer authorized by the laws of the state to take and certify oaths, who shall certify upon the application that he personally knows the commissioners and knows them to be the officers as asserted in the application and that each subscribed and swore thereto in the officer's presence.

History: En. Sec. 5, Ch. 153, L. 1941; re-en. Sec. 5309.27A, R.C.M. 1935; amd. Sec. 1, Ch. 281, L. 1971; R.C.M. 1947, 35-128(part).

7-15-2108. Processing of application by secretary of state. (1) The secretary of state shall examine the application, and if he finds that the name proposed for the corporation is not identical with that of a person or of any other corporation of this state or so nearly similar as to lead to confusion and uncertainty, he shall receive and file it and shall record it in an appropriate book of record in his office.

(2) When the application has been made, filed, and recorded, the secretary of state shall make and issue to the commissioners a certificate of incorporation pursuant to this part, under the seal of the state, and shall record the same with the application.

History: En. Sec. 5, Ch. 153, L. 1941; re-en. Sec. 5309.27A, R.C.M. 1935; amd. Sec. 1, Ch. 281, L. 1971; R.C.M. 1947, 35-128(part).

7-15-2109. Effect of filing and recording application. When the application has been made, filed, and recorded as provided in 7-15-2107 and 7-15-2108, the authority shall constitute a public body and a body corporate and politic under the name proposed in the application.

History: En. Sec. 5, Ch. 153, L. 1941; re-en. Sec. 5309.27A, R.C.M. 1935; amd. Sec. 1, Ch. 281, L. 1971; R.C.M. 1947, 35-128(part).

7-15-2110. Presumption of regularity in creation of county housing authority. (1) In any suit, action, or proceeding involving the validity or enforcement of or relating to any contract of the authority, the authority shall be conclusively deemed to have been established in accordance with the provisions of this part upon proof of the issuance of the aforesaid certificate by the secretary of state.

(2) A copy of such certificate, duly certified by the secretary of state, shall be admissible in evidence in any such suit, action, or proceeding and shall be conclusive proof of the filing and contents thereof.

History: En. Sec. 5, Ch. 153, L. 1941; re-en. Sec. 5309.27A, R.C.M. 1935; amd. Sec. 1, Ch. 281, L. 1971; R.C.M. 1947, 35-128(7).

7-15-2111. Area of operation of county housing authority — inclusion of municipalities. (1) The area of operation of a county housing authority includes the county but does not include any city unless a resolution has been adopted by the governing body of the city and by any authority established and authorized to exercise its powers in the city declaring that there is need for the county authority to exercise its powers within that city. The resolution is not effective until it has been approved by a majority vote of the electors within the corporate limits of the city or town voting either at a special election held in conjunction with a regular or primary election or at a general election.

(2) If, after the adoption of a resolution or resolutions, an authority is established for any city within the county, the county authority may not initiate any further housing projects within the city without the consent by resolution of the governing body of the city and of the authority established for the city.

History: En. Sec. 5, Ch. 153, L. 1941; re-en. Sec. 5309.27A, R.C.M. 1935; amd. Sec. 1, Ch. 281, L. 1971; R.C.M. 1947, 35-128(part); amd. Sec. 54, Ch. 387, L. 1995.

Compiler's Comments

1995 Amendment: Chapter 387 in (1), in second sentence near end, inserted "election held in conjunction with a regular or primary election"; and made minor changes in style.

7-15-2112. Administration and operation of county housing authority — application of municipal laws. (1) The commissioners of a housing authority created for a county may be appointed and removed by the board of county commissioners of the county in the same manner as the commissioners of a housing authority created for a city may be appointed and removed by the mayor.

(2) Except as otherwise provided in this part, each housing authority created for a county and the commissioners thereof shall have the same functions, rights, powers, duties, and limitations provided for housing authorities created for cities and the commissioners of such housing authorities, and for such purposes, unless a different meaning clearly appears from the context:

(a) the term "mayor" or "council" as used in the housing authorities law and any amendments thereto shall be construed as meaning "board of county commissioners";

(b) the term "city clerk" as used therein shall be construed as meaning "county clerk";

(c) the term "city" as used therein shall be construed as meaning "county"; and

(d) the term "ordinance" shall be construed as meaning "resolution".

History: En. Sec. 5, Ch. 153, L. 1941; re-en. Sec. 5309.27B, R.C.M. 1935; amd. Sec. 2, Ch. 281, L. 1971; amd. Sec. 2, Ch. 259, L. 1974; R.C.M. 1947, 35-129.

7-15-2113. County housing authority to be nonprofit. It is hereby declared to be the policy of this state that:

(1) each housing authority shall manage and operate its housing projects in an efficient manner so as to enable it to fix the rentals for dwelling accommodations at the lowest possible rates consistent with its providing decent, safe, and sanitary dwelling accommodations; and

(2) no housing authority shall construct or operate any such project for profit or as a source of revenue to the county.

History: En. Sec. 5, Ch. 153, L. 1941; re-en. Sec. 5309.27F, R.C.M. 1935; R.C.M. 1947, 35-133(part).

7-15-2114. Certain laws controlling. Insofar as the provisions of this part are inconsistent with the provisions of any other law, the provisions of this part are controlling.

History: En. Sec. 7, Ch. 153, L. 1941; R.C.M. 1947, 35-134; amd. Sec. 15, Ch. 253, L. 1979.

7-15-2115. Authorization for payment of rentals in lieu of taxes. (1) Any housing authority established pursuant to this part and/or the federal government may pay annual sums from rentals in lieu of taxes to any state and/or political subdivision thereof with respect to any real property, including improvements thereon, owned or held by either such housing authority or the federal government.

(2) The amount so paid for any year upon such property shall not exceed the taxes which would be paid to the state and/or subdivision thereof, as the case may be, upon such property if it were not exempt from taxation, with such allowances as may be considered to be appropriate for expenditures by the government for streets, utilities, or other public services to serve such property.

History: En. Sec. 4, Ch. 215, L. 1943; R.C.M. 1947, 35-304.

7-15-2116 through 7-15-2119 reserved.

7-15-2120. Authorization for counties to furnish assistance in the rehabilitation of private dwellings. If it has determined that unsanitary or unsafe privately owned dwellings exist in the unincorporated area of the county and it has further determined that the owners of such dwellings are unable under the prevailing market conditions to finance replacement or rehabilitation of their dwellings without assistance, the board of county commissioners may:

(1) using the funds provided in (2), finance the replacement or rehabilitation of such unsanitary or unsafe privately owned dwellings through the use of grants of funds or property, direct loans, loan guarantees, and any other means;

(2) accept gifts of property or apply for and accept grants, contributions, and any other form of financial assistance from the federal government or the state or other public body or from any other public or private source for the purposes of this section and 7-15-2101; and

(3) enter into and carry out contracts in connection with activities under subsection (1) or (2).

History: En. Sec. 3, Ch. 363, L. 1985.

Cross-References

Home weatherization programs, Title 90, ch. 4, part 2.

7-15-2121. Authorization for rural housing projects. Housing authorities created for counties are specifically empowered and authorized to borrow money, accept grants, and exercise their other powers to provide housing for rural residents of low income.

History: En. Sec. 5, Ch. 153, L. 1941; re-en. Sec. 5309.27C, R.C.M. 1935; R.C.M. 1947, 35-130(part); amd. Sec. 1, Ch. 363, L. 1985.

7-15-2122. Operation of rural housing projects. (1) In connection with the projects authorized by 7-15-2121, such housing authorities may enter into such leases or purchase agreements, accept such conveyances, and rent or sell dwellings forming part of such projects to or for rural residents of low income as such housing authority deems necessary in order to assure the achievement of the objectives of this part.

(2) Such leases, agreements, or conveyances may include such covenants as the housing authority deems appropriate regarding such dwellings and the tracts of lands described in any such instrument. The covenants shall be deemed to run with the land where the housing authority deems it necessary and the parties to such instrument so stipulate.

(3) Nothing contained in this section and 7-15-2121 shall be construed as limiting any other powers of any housing authority, except that no more than 2 acres of land per dwelling, together with the dwelling houses thereon provided for under the provisions of this part, shall be exempt from taxation and that upon title to said 2 acres of land and the dwelling houses thereon passing to private ownership, the said land and the dwelling houses thereon shall be restored to the tax rolls and be subject to taxation.

History: En. Sec. 5, Ch. 153, L. 1941; re-en. Sec. 5309.27C, R.C.M. 1935; R.C.M. 1947, 35-130(part); amd. Sec. 2, Ch. 363, L. 1985.

7-15-2123. Housing applications by farmers. (1) The owner of any farm operated or worked upon by farmers of low income in need of safe and sanitary housing may file an application with a housing authority of a county requesting that it provide for a safe and sanitary dwelling or dwellings for occupancy by such farmers of low income.

(2) Such applications shall be received and examined by housing authorities in connection with the formulation of projects or programs to provide housing for farmers of low income.

History: En. Sec. 5, Ch. 153, L. 1941; re-en. Sec. 5309.27D, R.C.M. 1935; R.C.M. 1947, 35-131.

7-15-2124. Definition of term farmers of low income. "Farmers of low income" shall mean persons or families who, at the time of their admission to occupancy in a dwelling of the authority:

(1) live under unsafe or unsanitary housing conditions;

(2) derive their principal income from operating or working upon a farm; and

(3) had an aggregate average annual net income for the 3 years preceding their admission that was less than the amount determined by the authority to be necessary, within its area of operation, to enable them, without financial assistance, to obtain decent, safe, and sanitary housing without overcrowding.

History: En. Sec. 5, Ch. 153, L. 1941; re-en. Sec. 5309.27E, R.C.M. 1935; R.C.M. 1947, 35-132.

Parts 22 through 40 reserved

Part 41

General Provisions Related to Municipal Housing and Construction

7-15-4101. Numbering of houses and lots. The city or town council has power to regulate the numbering of houses and lots and to change the same.

History: En. Subd. 14, Sec. 5039, R.C.M. 1921; amd. Sec. 1, Ch. 115, L. 1925; amd. Sec. 1, Ch. 20, L. 1927; re-en. Secs. 5039.13, R.C.M. 1935; R.C.M. 1947, 11-916.

7-15-4102. Findings and policy with regard to unsanitary and unsafe private dwellings. (1) It is hereby declared that:

(a) unsanitary or unsafe privately owned dwelling accommodations exist in urban areas throughout the state, and these conditions cause an increase in and spread of disease and crime and constitute a menace to the health, morals, and welfare of the citizens of the state and impair economic values;

(b) in many instances, the owners of such accommodations, due to poverty, unavailability of credit, and increased costs, are unable to finance the rehabilitation of their dwellings; and

(c) the municipal corporations of the state are uniquely able to render financial assistance to these owners of unsafe and unsanitary dwellings, and such assistance is a public use and purpose for which public money may be spent.

(2) The necessity for the provisions of 7-15-4103 is hereby declared, as a matter of legislative determination, to be in the public interest.

History: En. 11-1025 by Sec. 1, Ch. 131, L. 1975; R.C.M. 1947, 11-1025(1).

7-15-4103. Authorization for municipalities to furnish assistance in the rehabilitation of private dwellings. When it has determined that unsanitary or unsafe privately owned dwelling accommodations exist within the limits of the city or town and when it has further determined that the owners of such accommodations are unable under the prevailing market conditions to finance rehabilitation of their dwellings without assistance, the governing body of any municipal corporation:

(1) may finance the rehabilitation of such unsanitary or unsafe privately owned dwelling accommodations through the use of grants of funds or property, direct loans, loan guarantees, and other means;

(2) may apply for and accept advances, loans, grants, contributions, and any other form of financial assistance from the federal government or the state,

county, or other public body or from any other public or private source for the purpose of this section and 7-15-4102; and

(3) may enter into and carry out contracts in connection therewith.

History: **En. 11-1025 by Sec. 1, Ch. 131, L. 1975; R.C.M. 1947, 11-1025(2).**

Cross-References

Home weatherization programs, Title 90, ch. 4, part 2.

7-15-4104 through 7-15-4120 reserved.

7-15-4121. Adoption of building, electrical, and plumbing codes. The governing body of an incorporated city or town may adopt technical building, electrical, and plumbing codes, in whole or in part, by reference under the procedure provided in 7-5-4202.

History: **En. Sec. 4805, Pol. C. 1895; re-en. Sec. 3265, Rev. C. 1907; re-en. Sec. 5056, R.C.M. 1921; re-en. Sec. 5056, R.C.M. 1935; amd. Sec. 1, Ch. 38, L. 1967; amd. Sec. 1, Ch. 231, L. 1969; amd. Sec. 1, Ch. 111, L. 1975; R.C.M. 1947, 11-1102(part).**

7-15-4122. Repealed. Sec. 156, Ch. 370, L. 1987.

History: **En. Subd. 51, Sec. 5039, R.C.M. 1921; amd. Sec. 1, Ch. 115, L. 1925; amd. Sec. 1, Ch. 20, L. 1927; re-en. Sec. 5039.50, R.C.M. 1935; R.C.M. 1947, 11-953.**

7-15-4123. Inspection of building materials. The city or town council has power to provide for the inspection and measuring of lumber and other building materials.

History: **En. Subd. 57, Sec. 5039, R.C.M. 1921; amd. Sec. 1, Ch. 115, L. 1925; amd. Sec. 1, Ch. 20, L. 1927; re-en. Sec. 5039.56, R.C.M. 1935; R.C.M. 1947, 11-959.**

7-15-4124. Entrances and safety exits for buildings. The city or town council has power to:

(1) compel the owner of a building to erect fire escapes and proper exits and entrances when necessary for safety;

(2) regulate the construction of entrances of basements, cellars, and other floors to buildings from the sidewalks.

History: **(1)En. Subd. 67, Sec. 5039, R.C.M. 1921; amd. Sec. 1, Ch. 115, L. 1925; amd. Sec. 1, Ch. 20, L. 1927; re-en. Sec. 5039.66, R.C.M. 1935; Sec. 11-969, R.C.M. 1947; (2)En. Subd. 70, Sec. 5039, R.C.M. 1921, amd. Sec. 1, Ch. 115, L. 1925; amd. Sec. 1, Ch. 20, L. 1927; re-en. Sec. 5039.69, R.C.M. 1947; Sec. R.C.M. 1947, 11-969, 11-972(part).**

7-15-4125. Repair of damaged structures. The city or town council has power to require the owner of a sidewalk, house, or other structure which is dangerous to passers-by to repair or remove the same after notice.

History: **En. Subd. 72, Sec. 5039, R.C.M. 1921; amd. Sec. 1, Ch. 115, L. 1925; amd. Sec. 1, Ch. 20, L. 1927; re-en. Sec. 5039.71, R.C.M. 1935; R.C.M. 1947, 11-974.**

7-15-4126. Regulation of partition fences and party walls. The city or town council has power to regulate partition fences and party walls not already constructed.

History: **En. Subd. 50, Sec. 5039, R.C.M. 1921; amd. Sec. 1, Ch. 115, L. 1925; amd. Sec. 1, Ch. 20, L. 1927; re-en. Sec. 5039.49, R.C.M. 1935; R.C.M. 1947, 11-952.**

Part 42

Urban Renewal

7-15-4201. Short title. This part and part 43 shall be known and may be cited as the “Urban Renewal Law”.

History: En. Sec. 20, Ch. 195, L. 1959; R.C.M. 1947, 11-3920.

Cross-References

"School district" — community college district, 20-15-403.

7-15-4202. Existence of blighted areas and resulting problems — statement of policy. It is hereby found and declared:

(1) that blighted areas which constitute a serious and growing menace, injurious to the public health, safety, morals, and welfare of the residents of the state, exist in municipalities of the state;

(2) that the existence of such areas:

(a) contributes substantially and increasingly to the spread of disease and crime and depreciation of property values;

(b) constitutes an economic and social liability;

(c) substantially impairs or arrests the sound growth of municipalities;

(d) retards the provision of housing accommodations;

(e) aggravates traffic problems; and

(f) substantially impairs or arrests the elimination of traffic hazards and the improvement of traffic facilities; and

(3) that the prevention and elimination of such areas is a matter of state policy and state concern in order that the state and its municipalities shall not continue to be endangered by areas which are focal centers of disease, promote juvenile delinquency, are conducive to fires, are difficult to police and to provide police protection for, and, while contributing little to the tax income of the state and its municipalities, consume an excessive proportion of its revenues because of the extra services required for police, fire, accident, hospitalization, and other forms of public protection, services, and facilities.

History: En. Sec. 2, Ch. 195, L. 1959; R.C.M. 1947, 11-3902(part).

7-15-4203. Need for redevelopment and rehabilitation of blighted areas. It is further found and declared:

(1) that certain of such blighted areas or portions thereof may require acquisition, clearance, and disposition subject to use restrictions as provided in this part, since the prevailing condition of decay may make impracticable the reclamation of the area by rehabilitation;

(2) that other areas or portions thereof may, through the means provided in this part, be susceptible of rehabilitation in such a manner that the conditions and evils enumerated in 7-15-4202 may be eliminated, remedied, or prevented; and

(3) that to the extent feasible salvable blighted areas should be rehabilitated through voluntary action and the regulatory process.

History: En. Sec. 2, Ch. 195, L. 1959; R.C.M. 1947, 11-3902(part).

7-15-4204. Interpretation. It is further found and declared:

(1) that the powers conferred by this part and part 43 are for public uses and purposes for which public money may be expended and the power of eminent domain exercised; and

(2) that the necessity in the public interest for the provisions enacted in this part and part 43 is hereby declared as a matter of legislative determination.

History: En. Sec. 2, Ch. 195, L. 1959; R.C.M. 1947, 11-3902(part).

7-15-4205. Scope. Insofar as the provisions of this part and part 43 are inconsistent with the provisions of any other law, the provisions of this part and part 43 shall be controlling. The powers conferred by this part and part 43 shall be in addition and supplemental to the powers conferred by any other law.

History: En. Sec. 19, Ch. 195, L. 1959; R.C.M. 1947, 11-3919(part).

7-15-4206. Definitions. The following terms, wherever used or referred to in this part or part 43, shall have the following meanings unless a different meaning is clearly indicated by the context:

(1) "Agency" or "urban renewal agency" shall mean a public agency created by 7-15-4232.

(2) "Blighted area" shall mean an area which is conducive to ill health, transmission of disease, infant mortality, juvenile delinquency, and crime; substantially impairs or arrests the sound growth of the city or its environs; retards the provision of housing accommodations; or constitutes an economic or social liability and/or is detrimental or constitutes a menace to the public health, safety, welfare, and morals in its present condition and use, by reason of:

(a) the substantial physical dilapidation; deterioration; defective construction, material, and arrangement; and/or age obsolescence of buildings or improvements, whether residential or nonresidential;

(b) inadequate provision for ventilation, light, proper sanitary facilities, or open spaces as determined by competent appraisers on the basis of an examination of the building standards of the municipality;

(c) inappropriate or mixed uses of land or buildings;

(d) high density of population and overcrowding;

(e) defective or inadequate street layout;

(f) faulty lot layout in relation to size, adequacy, accessibility, or usefulness;

(g) excessive land coverage;

(h) unsanitary or unsafe conditions;

(i) deterioration of site;

(j) diversity of ownership;

(k) tax or special assessment delinquency exceeding the fair value of the land;

(l) defective or unusual conditions of title;

(m) improper subdivision or obsolete platting;

(n) the existence of conditions which endanger life or property by fire or other causes; or

(o) any combination of such factors.

(3) "Bonds" shall mean any bonds, notes, or debentures (including refunding obligations) herein authorized to be issued.

(4) "Clerk" shall mean the clerk or other official of the municipality who is the custodian of the official records of such municipality.

(5) "Federal government" shall include the United States of America or any agency or instrumentality, corporate or otherwise, of the United States of America.

(6) "Local governing body" shall mean the council or other legislative body charged with governing the municipality.

(7) "Mayor" shall mean the chief executive of a city or town.

(8) "Municipality" shall mean any incorporated city or town in the state.

(9) "Neighborhood development program" means the yearly activities or undertakings of a municipality in an urban renewal area or areas if the municipality shall elect to undertake activities on an annual increment basis.

(10) "Obligee" shall include any bondholder or agent or trustee for any bondholder or lessor demising to the municipality property used in connection with an urban renewal project or any assignee or assignees of such lessor's interest or any part thereof and the federal government when it is a party to any contract with the municipality.

(11) "Person" shall mean any individual, firm, partnership, corporation, company, association, joint-stock association, or school district and shall include any trustee, receiver, assignee, or other person acting in a similar representative capacity.

(12) "Public body" shall mean the state or any municipality, township, board, commission, district, or any other subdivision or public body of the state.

(13) "Public officer" shall mean any officer who is in charge of any department or branch of the government of the municipality relating to health, fire, building regulations, or to other activities concerning dwellings in the municipality.

(14) "Real property" shall include all lands, including improvements and fixtures thereon, and property of any nature appurtenant thereto or used in connection therewith and every estate, interest, right, and use, legal or equitable, therein, including terms for years and liens by way of judgment, mortgage, or otherwise.

(15) "Redevelopment" may include:

(a) acquisition of a blighted area or portion thereof;

(b) demolition and removal of buildings and improvements;

(c) installation, construction, or reconstruction of streets, utilities, parks, playgrounds, and other improvements necessary for carrying out in the area the urban renewal provisions of this part in accordance with the urban renewal plan; and

(d) making the land available for development or redevelopment by private enterprise or public agencies (including sale, initial leasing, or retention by the municipality itself) at its fair value for uses in accordance with the urban renewal plan.

(16) "Rehabilitation" may include the restoration and renewal of a blighted area or portion thereof in accordance with an urban renewal plan by:

(a) carrying out plans for a program of voluntary or compulsory repair and rehabilitation of buildings or other improvements;

(b) acquisition of real property and demolition or removal of buildings and improvements thereon where necessary to eliminate unhealthful, unsanitary, or unsafe conditions; lessen density; reduce traffic hazards; eliminate obsolete or other uses detrimental to the public welfare; to otherwise remove or prevent the spread of blight or deterioration; or to provide land for needed public facilities;

(c) installation, construction, or reconstruction of streets, utilities, parks, playgrounds, and other improvements necessary for carrying out in the area the urban renewal provisions of this part; and

(d) the disposition of any property acquired in such urban renewal area (including sale, initial leasing, or retention by the municipality itself) at its fair value for uses in accordance with such urban renewal plan.

(17) "Urban renewal area" means a blighted area which the local governing body designates as appropriate for an urban renewal project or projects.

(18) "Urban renewal plan" means a plan, as it exists from time to time, for one or more urban renewal areas or for an urban renewal project, which plan:

(a) shall conform to the comprehensive plan or parts thereof for the municipality as a whole; and

(b) shall be sufficiently complete to indicate, on a yearly basis or otherwise:

(i) such land acquisition, demolition, and removal of structures; redevelopment; improvements; and rehabilitation as may be proposed to be carried out in the urban renewal area;

(ii) zoning and planning changes, if any;

(iii) land uses, maximum densities, building requirements; and

(iv) the plan's relationship to definite local objectives respecting appropriate land uses, improved traffic, public transportation, public utilities, recreational and community facilities, and other public improvements.

(19) "Urban renewal project" may include undertakings or activities of a municipality in an urban renewal area for the elimination and for the prevention of the development or spread of blight and may involve redevelopment in an urban renewal area, rehabilitation or conservation in an urban renewal area, or any combination or part thereof in accordance with an urban renewal plan.

History: En. Sec. 1, Ch. 195, L. 1959; amd. Sec. 1, Ch. 210, L. 1969; R.C.M. 1947, 11-3901(part).

7-15-4207. Prohibition against discrimination. For all of the purposes of this part and part 43, no person may be subjected to discrimination because of sex, race, creed, religion, age, physical or mental handicap, color, or national origin.

History: En. Sec. 17, Ch. 195, L. 1959; amd. Sec. 2, Ch. 38, L. 1977; R.C.M. 1947, 11-3917; amd. Sec. 16, Ch. 253, L. 1979.

Cross-References

Individual dignity, Art. II, sec. 4, Mont. Const.

7-15-4208. Encouragement of private enterprise. A municipality, to the greatest extent it determines to be feasible in carrying out the provisions of this part and part 43, shall afford maximum opportunity, consistent with the sound needs of the municipality as a whole, to the rehabilitation or redevelopment of the urban renewal area by private enterprise. A municipality shall give consideration to this objective in exercising its powers under this part and part 43, including the formulation of a workable program; the approval of urban renewal plans (consistent with the comprehensive plan or parts thereof for the municipality); the exercise of its zoning powers; the enforcement of other laws, codes, and regulations relating to the use of land and the use and occupancy of buildings and improvements; the disposition of any property acquired; and the provision of necessary public improvements.

History: **En. Sec. 3, Ch. 195, L. 1959; R.C.M. 1947, 11-3903.**

7-15-4209. Development of workable urban renewal program. (1) A municipality, for the purposes of this part and part 43, may formulate a workable program for utilizing appropriate private and public resources:

(a) to eliminate and prevent the development or spread of blighted areas;

(b) to encourage needed urban rehabilitation;

(c) to provide for the redevelopment of such areas; or

(d) to undertake such of the aforesaid activities or other feasible municipal activities as may be suitably employed to achieve the objectives of such workable program.

(2) Such workable program may include, without limitation, provision for:

(a) the prevention of the spread of blight into areas of the municipality which are free from blight through diligent enforcement of housing, zoning, and occupancy controls and standards;

(b) the rehabilitation of blighted areas or portions thereof by replanning, removing congestion, providing parks, playgrounds, and other public improvements; by encouraging voluntary rehabilitation; and by compelling the repair and rehabilitation of deteriorated or deteriorating structures; and

(c) the clearance and redevelopment of blighted areas or portions thereof.

History: **En. Sec. 4, Ch. 195, L. 1959; R.C.M. 1947, 11-3904.**

7-15-4210. Resolution of necessity required to utilize provisions of part. No municipality shall exercise any of the powers hereafter conferred upon municipalities by this part and part 43 until after its local governing body shall have adopted a resolution finding that:

(1) one or more blighted areas exist in such municipality; and

(2) the rehabilitation, redevelopment, or a combination thereof of such area or areas is necessary in the interest of the public health, safety, morals, or welfare of the residents of such municipality.

History: **En. Sec. 5, Ch. 195, L. 1959; amd. Sec. 1, Ch. 38, L. 1965; R.C.M. 1947, 11-3905.**

7-15-4211. Preparation of comprehensive development plan for municipality. For the purpose of approving an urban renewal plan and other municipal purposes, authority is hereby vested in every municipality:

(1) to prepare, to adopt, and to revise from time to time a comprehensive plan or parts thereof for the physical development of the municipality as a whole (giving due regard to the environs and metropolitan surroundings);

(2) to establish and maintain a planning commission for such purpose and related municipal planning activities; and

(3) to make available and appropriate necessary funds therefor.

History: **En. Sec. 6, Ch. 195, L. 1959; amd. Sec. 2, Ch. 38, L. 1965; amd. Sec. 2, Ch. 210, L. 1969; amd. Sec. 18, Ch. 158, L. 1971; R.C.M. 1947, 11-3906(part).**

7-15-4212. Preparation of urban renewal plan. The municipality may itself prepare or cause to be prepared an urban renewal plan, or any person or agency, public or private, may submit such a plan to the municipality.

History: **En. Sec. 6, Ch. 195, L. 1959; amd. Sec. 2, Ch. 38, L. 1965; amd. Sec. 2, Ch. 210, L. 1969; amd. Sec. 18, Ch. 158, L. 1971; R.C.M. 1947, 11-3906(part).**

7-15-4213. Review of urban renewal plan by planning commission. (1) Prior to its approval of an urban renewal project, the local governing body shall submit the urban renewal project plan to the planning commission of the municipality for review and recommendations as to its conformity with the comprehensive plan or parts thereof for the development of the municipality as a whole.

(2) The planning commission shall submit its written recommendations with respect to the proposed urban renewal plan to the local governing body within 60 days after receipt of it.

History: En. Sec. 6, Ch. 195, L. 1959; amd. Sec. 2, Ch. 38, L. 1965; amd. Sec. 2, Ch. 210, L. 1969; amd. Sec. 18, Ch. 158, L. 1971; R.C.M. 1947, 11-3906(part).

7-15-4214. Hearing on urban renewal plan required. (1) The local governing body shall hold a public hearing on an urban renewal plan after public notice thereof.

(2) Upon receipt of the recommendations of the planning commission, or if no recommendations are received within said 60 days, then without such recommendations, the local governing body may proceed with the hearing on the proposed urban renewal project plan.

History: En. Sec. 6, Ch. 195, L. 1959; amd. Sec. 2, Ch. 38, L. 1965; amd. Sec. 2, Ch. 210, L. 1969; amd. Sec. 18, Ch. 158, L. 1971; R.C.M. 1947, 11-3906(part).

7-15-4215. Notice of hearing on urban renewal plan. (1) The notice required by 7-15-4214(1) shall be given by publication once each week for 2 consecutive weeks, not less than 10 or more than 30 days prior to the date of the hearing, in a newspaper having a general circulation in the urban renewal area of the municipality and by mailing a notice of such hearing, not less than 10 days prior to the date of the hearing, to the persons whose names appear on the county treasurer's tax roll as the owners, reputed owners, or purchasers under contracts for deed of the property, at the address shown on the tax roll.

(2) The notice shall describe the time, date, place, and purpose of the hearing, shall generally identify the urban renewal area affected, and shall outline the general scope of the urban renewal plan under consideration.

History: En. Sec. 6, Ch. 195, L. 1959; amd. Sec. 2, Ch. 38, L. 1965; amd. Sec. 2, Ch. 210, L. 1969; amd. Sec. 18, Ch. 158, L. 1971; R.C.M. 1947, 11-3906(part); amd. Sec. 8, Ch. 526, L. 1983.

7-15-4216. Requirements for approval of urban renewal plans and projects. (1) The local governing body shall not approve an urban renewal plan until a comprehensive plan or parts of such plan for an area which would include an urban renewal area for the municipality have been prepared.

(2) A municipality shall not approve an urban renewal project for an urban renewal area unless the local governing body has by resolution determined such area to be a blighted area and designated such area as appropriate for an urban renewal project.

(3) An urban renewal plan adopted after July 1, 1979, must be approved by ordinance.

(4) All urban renewal plans approved by resolution prior to May 8, 1979, are hereby validated.

History: En. Sec. 6, Ch. 195, L. 1959; amd. Sec. 2, Ch. 38, L. 1965; amd. Sec. 2, Ch. 210, L. 1969; amd. Sec. 18, Ch. 158, L. 1971; R.C.M. 1947, 11-3906(part); amd. Sec. 1, Ch. 667, L. 1979.

7-15-4217. Criteria for approval of urban renewal project. Following the hearing required by 7-15-4214, the local governing body may, by ordinance, approve an urban renewal project if it finds that:

(1) a workable and feasible plan exists for making available adequate housing for the persons who may be displaced by the project;

(2) the urban renewal plan conforms to the comprehensive plan or parts thereof for the municipality as a whole;

(3) the urban renewal plan will afford maximum opportunity, consistent with the sound needs of the municipality as a whole, for the rehabilitation or redevelopment of the urban renewal area by private enterprise; and

(4) a sound and adequate financial program exists for the financing of said project.

History: En. Sec. 6, Ch. 195, L. 1959; amd. Sec. 2, Ch. 38, L. 1965; amd. Sec. 2, Ch. 210, L. 1969; amd. Sec. 18, Ch. 158, L. 1971; R.C.M. 1947, 11-3906(part); amd. Sec. 2, Ch. 667, L. 1979.

7-15-4218. Voter approval of urban renewal plan required when general obligation bonds to be used. If the plan or any subsequent modification thereof involves financing by the issuance of general obligation bonds of the municipality as authorized in 7-15-4302(1) or the financing of water or sewer improvements by the issuance of revenue bonds under the provisions of part 44 of chapter 7 or of part 43 of chapter 13, the question of approving the plan and issuing such bonds shall be submitted to a vote of the qualified electors of such municipality, in accordance with the provisions governing municipal general obligation bonds under chapter 7, part 42, at the same election and shall be approved by a majority of those qualified electors voting on such question.

History: En. Sec. 6, Ch. 195, L. 1959; amd. Sec. 2, Ch. 38, L. 1965; amd. Sec. 2, Ch. 210, L. 1969; amd. Sec. 18, Ch. 158, L. 1971; R.C.M. 1947, 11-3906(part); amd. Sec. 46, Ch. 575, L. 1981.

7-15-4219. Effect of approval of urban renewal project. Upon the approval of an urban renewal project by a municipality, the provisions of the urban renewal plan with respect to the future use and building requirements applicable to the property covered by said plan shall be controlling with respect thereto.

History: En. Sec. 6, Ch. 195, L. 1959; amd. Sec. 2, Ch. 38, L. 1965; amd. Sec. 2, Ch. 210, L. 1969; amd. Sec. 18, Ch. 158, L. 1971; R.C.M. 1947, 11-3906(f).

7-15-4220. Use of neighborhood development program to implement urban renewal activities. (1) The municipality may elect to undertake and carry out urban renewal activities on a yearly basis. In such event, the activities shall be included in the yearly budget of the municipality. The undertaking of urban renewal activities on a yearly basis shall be designated as a "neighborhood development program" and the financing of such activities shall be approved in accordance with 7-15-4218.

(2) In the event of such election, the municipality shall present its proposed annual increment activities or undertakings for public approval in keeping with 7-15-4211 through 7-15-4221. Such activity year shall relate to the budget year of the municipality.

(3) Such activities need not be limited to contiguous areas. However, such activities shall be confined to the areas as outlined in the urban renewal plan

as approved by the municipality in accordance with this part. The yearly activities shall constitute a part of the urban renewal plan, and the municipality may elect to undertake certain yearly activities and total urban renewal projects simultaneously.

(4) Every municipality shall have all the power necessary or convenient to plan and undertake neighborhood development projects consisting of urban renewal project undertakings and activities in one or more urban renewal areas which are planned and carried out on the basis of annual increments in accordance with the provisions of this part and part 43 for carrying out and planning urban renewal projects.

History: (1), (3)En. Sec. 6, Ch. 195, L. 1959; amd. Sec. 2, Ch. 38, L. 1965; amd. Sec. 2, Ch. 210, L. 1969; amd. Sec. 18, Ch. 158, L. 1971; Sec. 11-3906, R.C.M. 1947; (2)En. Sec. 1, Ch. 195, L. 1959; amd. Sec. 1, Ch. 210, L. 1969; Sec. 11-3901, R.C.M. 1947; (4)En. Sec. 7, Ch. 195, L. 1959; amd. Sec. 3, Ch. 210, L. 1969; Sec. 11-3907, R.C.M. 1947; R.C.M. 1947, 11-3901(part), 11-3906(h), 11-3907(j).

7-15-4221. Modification of urban renewal project plan. (1) An urban renewal project plan may be modified at any time by the local governing body. If modified after the lease or sale by the municipality of real property in the urban renewal project area, such modification shall be subject to such rights at law or in equity as a lessee or purchaser or his successor or successors in interest may be entitled to assert.

(2) An urban renewal plan may be modified by ordinance.

(3) All urban renewal plans approved or modified by resolution prior to May 8, 1979, are hereby validated.

(4) A plan may be modified by:

(a) the procedure set forth in 7-15-4212 through 7-15-4219 with respect to adoption of an urban renewal plan;

(b) the procedure set forth in the plan.

History: En. Sec. 6, Ch. 195, L. 1959; amd. Sec. 2, Ch. 38, L. 1965; amd. Sec. 2, Ch. 210, L. 1969; amd. Sec. 18, Ch. 158, L. 1971; R.C.M. 1947, 11-3906(e); amd. Sec. 3, Ch. 667, L. 1979.

7-15-4222 through 7-15-4230 reserved.

7-15-4231. Exercise of powers related to urban renewal. A municipality may itself exercise its urban renewal project powers as herein defined or may, if the local governing body by resolution determines such action to be in the public interest, elect to have such powers exercised by the urban renewal agency created by 7-15-4232 or a department or other officers of the municipality as they are authorized to exercise under this part and part 43.

History: En. Sec. 15, Ch. 195, L. 1959; R.C.M. 1947, 11-3915(a).

7-15-4232. Authorization to assign urban renewal powers to municipal departments or to create urban renewal agency. When a municipality has made the finding prescribed in 7-15-4210 and has elected to have the urban renewal project powers exercised as specified in 7-15-4233:

(1) such urban renewal project powers may be assigned to a department or other officers of the municipality or to any existing public body corporate; or

(2) the legislative body of a city may create an urban renewal agency in such municipality, to be known as a public body corporate, to which such powers may be assigned.

History: En. Sec. 16, Ch. 195, L. 1959; R.C.M. 1947, 11-3916(a).

7-15-4233. Powers which may be exercised by urban renewal agency or authorized department. (1) In the event the local governing body makes such determination, such body may authorize the urban renewal agency or department or other officers of the municipality to exercise any of the following urban renewal project powers:

(a) to formulate and coordinate a workable program as specified in 7-15-4209;

(b) to prepare urban renewal plans;

(c) to prepare recommended modifications to an urban renewal project plan;

(d) to undertake and carry out urban renewal projects as required by the local governing body;

(e) to make and execute contracts as specified in 7-15-4251, 7-15-4254, 7-15-4255, and 7-15-4281, with the exception of contracts for the purchase or sale of real or personal property;

(f) to disseminate blight clearance and urban renewal information;

(g) to exercise the powers prescribed by 7-15-4255, except the power to agree to conditions for federal financial assistance and imposed pursuant to federal law relating to salaries and wages shall be reserved to the local governing body;

(h) to enter any building or property in any urban renewal area in order to make surveys and appraisals in the manner specified in 7-15-4257;

(i) to improve, clear, or prepare for redevelopment any real or personal property in an urban renewal area;

(j) to insure real or personal property as provided in 7-15-4258;

(k) to effectuate the plans provided for in 7-15-4254;

(l) to prepare plans for the relocation of families displaced from an urban renewal area and to coordinate public and private agencies in such relocation;

(m) to prepare plans for carrying out a program of voluntary or compulsory repair and rehabilitation of buildings and improvements;

(n) to conduct appraisals, title searches, surveys, studies, and other preliminary plans and work necessary to prepare for the undertaking of urban renewal projects;

(o) to negotiate for the acquisition of land;

(p) to study the closing, vacating, planning, or replanning of streets, roads, sidewalks, ways, or other places and to make recommendations with respect thereto;

(q) to organize, coordinate, and direct the administration of the provisions of this part and part 43;

(r) to perform such duties as the local governing body may direct so as to make the necessary arrangements for the exercise of the powers and performance of the duties and responsibilities entrusted to the local governing body.

(2) Any powers granted in this part or part 43 that are not included in subsection (1) as powers of the urban renewal agency or a department or other officers of a municipality in lieu thereof may only be exercised by the local governing body or other officers, boards, and commissions as provided under existing law.

History: En. Sec. 15, Ch. 195, L. 1959; R.C.M. 1947, 11-3915(b).

7-15-4234. Urban renewal agency to be administered by appointed board of commissioners. (1) If the urban renewal agency is authorized to transact business and exercise powers hereunder, the mayor, by and with the advice and consent of the local governing body, shall appoint a board of commissioners of the urban renewal agency, which shall consist of five commissioners.

(2) The initial membership shall consist of one commissioner appointed for 1 year, one for 2 years, one for 3 years, and two for 4 years. Each appointment thereafter shall be for 4 years. A certificate of the appointment or reappointment of any commissioner shall be filed with the clerk of the municipality, and such certificate shall be conclusive evidence of the due and proper appointment of such commissioner.

(3) Each commissioner shall hold office until his successor has been appointed and has qualified.

(4) A commissioner shall receive no compensation for his services but shall be entitled to the necessary expenses, including traveling expenses, incurred in the discharge of his duties.

(5) Any persons may be appointed as commissioners if they reside within the municipality.

(6) A commissioner may be removed for inefficiency, neglect of duty, or misconduct in office.

History: En. Sec. 16, Ch. 195, L. 1959; R.C.M. 1947, 11-3916(part).

7-15-4235. Restrictions on agency commissioners holding other public office. A majority of the commissioners of an urban renewal agency exercising powers pursuant to this part or part 43 shall not hold any other public office under the municipality other than their commissionership or office with respect to such urban renewal agency, department, or office.

History: En. Sec. 18, Ch. 195, L. 1959; R.C.M. 1947, 11-3918(part).

7-15-4236. Conduct of business. The powers and responsibilities of an urban renewal agency shall be exercised by the commissioners thereof. A majority of the commissioners shall constitute a quorum for the purpose of conducting business and exercising the powers and responsibilities of the agency and for all other purposes. Action may be taken by the agency upon a vote of a majority of the commissioners present unless in any case the bylaws shall require a larger number.

History: En. Sec. 16, Ch. 195, L. 1959; R.C.M. 1947, 11-3916(part).

7-15-4237. Annual report. (1) An agency authorized to transact business and exercise powers under this part and part 43 shall file with the local governing body, on or before September 30 of each year, a report of its activities for the preceding fiscal year.

(2) The report shall include a complete financial statement setting forth its assets, liabilities, income, and operating expenses as of the end of the fiscal year.

(3) At the time of filing the report, the agency shall publish in a newspaper of general circulation in the community a notice to the effect that such report has been filed with the municipality and that the report is available for

inspection during business hours in the office of the city clerk and in the office of the agency.

History: **En. Sec. 16, Ch. 195, L. 1959; R.C.M. 1947, 11-3916(part); amd. Sec. 1, Ch. 441, L. 1991.**

7-15-4238. Employment of necessary staff. The urban renewal agency or department or officers exercising urban renewal project powers shall be supplied with the necessary technical experts and such other agents and employees, permanent and temporary, as are required.

History: **En. Sec. 16, Ch. 195, L. 1959; R.C.M. 1947, 11-3916(part); amd. Sec. 17, Ch. 253, L. 1979.**

7-15-4239. Control of conflict of interest. (1) (a) No public official, no employee of a municipality or urban renewal agency, and no department or officers which have been vested by a municipality with urban renewal project powers and responsibilities under 7-15-4231 shall voluntarily acquire any interest, direct or indirect, in any urban renewal project, in any property included or planned to be included in any urban renewal project of such municipality, or in any contract or proposed contract in connection with such urban renewal project.

(b) Where such acquisition is not voluntary, the interest acquired shall be immediately disclosed in writing to the local governing body, and such disclosure shall be entered upon the minutes of the governing body.

(2) If any such official or department or division head owns or controls or owned or controlled within 2 years prior to the date of hearing on the urban renewal project any interest, direct or indirect, in any property which he knows is included in an urban renewal project, he shall immediately disclose this fact in writing to the local governing body, and such disclosure shall be entered upon the minutes of the governing body. Any such official or department or division head shall not participate in any action on that particular project by the municipality or urban renewal agency, department, or officers which have been vested with urban renewal project powers by the municipality pursuant to the provisions of 7-15-4231.

History: **En. Sec. 18, Ch. 195, L. 1959; R.C.M. 1947, 11-3918(part).**

7-15-4240. Misconduct in office. Any violation of the provisions of 7-15-4235 or 7-15-4239 shall constitute misconduct in office.

History: **En. Sec. 18, Ch. 195, L. 1959; R.C.M. 1947, 11-3918(part).**

7-15-4241 through 7-15-4250 reserved.

7-15-4251. General powers of municipalities in connection with urban renewal. Every municipality shall have all the power necessary or convenient:

(1) to carry out and effectuate the purposes and provisions of this part and part 43;

(2) to undertake and carry out urban renewal projects within the municipality, to make and execute contracts and other instruments necessary or convenient to the exercise of its powers under this part and part 43, and to disseminate blight clearance and urban renewal information;

(3) to organize, coordinate, and direct, within the municipality, the administration of the provisions of this part and part 43 as they apply to such municipality in order that the objective of remedying blighted areas and

preventing the causes thereof within such municipality may be most effectively promoted and achieved and to establish such new office or offices of the municipality or to reorganize existing offices in order to carry out such purpose most effectively;

(4) to exercise all or any part or combination of powers granted in this part or part 43.

History: En. Sec. 7, Ch. 195, L. 1959; amd. Sec. 3, Ch. 210, L. 1969; R.C.M. 1947, 11-3907(part).

7-15-4252. Prevention and elimination of urban blight. The municipality is authorized to develop, test, and report methods and techniques and carry out demonstrations and other activities for the prevention and the elimination of urban blight and to apply for, accept, and utilize grants of funds from the federal government for such purposes.

History: En. Sec. 7, Ch. 195, L. 1959; amd. Sec. 3, Ch. 210, L. 1969; R.C.M. 1947, 11-3907(part).

7-15-4253. Relocation of displaced families. Every municipality shall have power to prepare plans for the relocation of families displaced from an urban renewal area and to make relocation payments and to coordinate public and private agencies in such relocation, including requesting such assistance for this purpose as is available from other private and governmental agencies, both for the municipality and other parties.

History: En. Sec. 7, Ch. 195, L. 1959; amd. Sec. 3, Ch. 210, L. 1969; R.C.M. 1947, 11-3907(g).

7-15-4254. Municipal power in the preparation of various plans. (1) Every municipality shall have power, within the municipality:

(a) to make or have made all plans necessary to the carrying out of the purposes of this part and to contract with any person, public or private, in making and carrying out such plans; and

(b) to adopt or approve, modify, and amend such plans.

(2) Such plans may include, without limitation:

(a) a comprehensive plan or parts thereof for the locality as a whole;

(b) urban renewal plans;

(c) plans for carrying out a program of voluntary or compulsory repair and rehabilitation of buildings and improvements;

(d) plans for the enforcement of state and local laws, codes, and regulations relating to the use of land and the use and occupancy of buildings and improvements and to the compulsory repair, rehabilitation, demolition, or removal of buildings and improvements; and

(e) appraisals, title searches, surveys, studies, and other preliminary plans and work necessary to prepare for the undertaking of urban renewal projects.

History: En. Sec. 7, Ch. 195, L. 1959; amd. Sec. 3, Ch. 210, L. 1969; R.C.M. 1947, 11-3907(part).

7-15-4255. Authority to provide or contract for services related to urban renewal. (1) Every municipality shall have power to:

(a) provide or arrange or contract for the furnishing or repair by any person or agency, public or private, of services, privileges, works, streets, or roads in connection with an urban renewal project;

(b) install, construct, and reconstruct streets, utilities, parks, playgrounds, and other public improvements.

(2) Every municipality shall have power to agree to any conditions that it may deem reasonable and appropriate attached to federal financial assistance and imposed pursuant to federal law relating to the determination of prevailing salaries or wages or compliance with labor standards in the undertaking or carrying out of an urban renewal project and to include in any contract let in connection with such a project provisions to fulfill such of said conditions as it may deem reasonable and appropriate.

History: En. Sec. 7, Ch. 195, L. 1959; amd. Sec. 3, Ch. 210, L. 1969; R.C.M. 1947, 11-3907(b).

7-15-4256. Restriction on operation of certain utility services by municipality. Nothing in this part or part 43 shall be construed to authorize any municipality to construct or operate, as a part of any urban renewal project, any electric generation plant, electric transmission or distribution lines, or other public utility facilities, excepting waterlines and sewerlines then operated by municipalities.

History: En. Sec. 7, Ch. 195, L. 1959; amd. Sec. 3, Ch. 210, L. 1969; R.C.M. 1947, 11-3907(l).

7-15-4257. Authority to enter private property. (1) Every municipality shall have power, within the municipality, to enter upon any building or property in any urban renewal area in order to make surveys and appraisals and to obtain an order for this purpose from a court of competent jurisdiction in the event entry is denied or resisted.

(2) Such entries shall be made in such manner as to cause the least possible inconvenience to the persons in possession.

History: En. Sec. 7, Ch. 195, L. 1959; amd. Sec. 3, Ch. 210, L. 1969; R.C.M. 1947, 11-3907(part).

7-15-4258. Acquisition and administration of real and personal property. (1) Every municipality shall have power to:

(a) acquire by purchase, lease, option, gift, grant, bequest, devise, eminent domain, or otherwise any real property and such personal property as may be necessary for the administration of the provisions contained in this part and part 43, together with any improvements thereon;

(b) hold, improve, clear, or prepare for redevelopment any such property;

(c) dispose of any real or personal property;

(d) insure or provide for the insurance of any real or personal property or operations of the municipality against any risks or hazards, including the power to pay premiums on any such insurance; and

(e) enter into a development agreement with the owner of real property within an urban renewal area and undertake activities, including the acquisition, removal, or demolition of structures, improvements, or personal property located on the real property, to prepare the property for redevelopment.

(2) A development agreement entered into in accordance with subsection (1)(e) must contain provisions obligating the owner to redevelop the real property for a specified use consistent with the urban renewal plan and offering recourse to the municipality if the redevelopment is not completed as determined by the local governing body. The development agreement may not

constitute the acquisition of an interest in real property by the municipality within the meaning of 7-15-4262 or 7-15-4263.

(3) However, no statutory provision with respect to the acquisition, clearance, or disposition of property by public bodies shall restrict a municipality in the exercise of such functions with respect to an urban renewal project.

(4) A municipality shall not acquire real property for an urban renewal project or enter into a development agreement, as provided in subsection (1)(e), unless the local governing body has approved the urban renewal project plan in accordance with 7-15-4216(2) and 7-15-4217.

History: (1), (2)En. Sec. 7, Ch. 195, L. 1959; amd. Sec. 3, Ch. 210, L. 1969; Sec. 11-3907, R.C.M. 1947; (3)En. Sec. 6, Ch. 195, L. 1959; amd. Sec. 2, Ch. 38, L. 1965; amd. Sec. 2, Ch. 210, L. 1969; amd. Sec. 18, Ch. 158, L. 1971; Sec. 11-3906, R.C.M. 1947; R.C.M. 1947, 11-3906(part), 11-3907(part); amd. Sec. 2, Ch. 441, L. 1991.

Cross-References

Eminent domain, Art. II, sec. 29, Mont. Const.; Title 70, ch. 30.

7-15-4259. Exercise of power of eminent domain. (1) After the adoption by the local governing body of a resolution declaring that the acquisition of the real property described therein is necessary for an urban renewal project under this part, a municipality shall have the right to acquire by condemnation any interest in real property which it may deem necessary for such purpose.

(2) Condemnation for urban renewal of blighted areas is declared to be a public use, and property already devoted to any other public use or acquired by the owner or his predecessor in interest by eminent domain may be condemned for the purposes of this part.

(3) The award of compensation for real property taken for such a project shall not be increased by reason of any increase in the value of the real property caused by the assembly, clearance, or reconstruction or proposed assembly, clearance, or reconstruction in the project area. No allowance shall be made for the improvements begun on real property after notice to the owner of such property of the institution of proceedings to condemn such property. Evidence shall be admissible bearing upon the unsanitary, unsafe, or substandard condition of the premises or the unlawful use thereof.

History: En. Sec. 8, Ch. 195, L. 1959; R.C.M. 1947, 11-3908.

Cross-References

Eminent domain, Title 70, ch. 30.

7-15-4260. Exemption from levy and sale for certain property. All property of a municipality, including funds, owned or held by it for the purposes of this part and part 43 shall be exempt from levy and sale by virtue of an execution, and no execution or other judicial process shall issue against the same nor shall judgment against a municipality be a charge or lien upon such property; provided, however, that the provisions of this section shall not apply to or limit the right of obligees to pursue any remedies for the enforcement of any pledge or lien given pursuant to this part or part 43 by a municipality on an urban renewal project or the rents, fees, grants, or revenues derived from these projects.

History: En. Sec. 12, Ch. 195, L. 1959; R.C.M. 1947, 11-3912(a); amd. Sec. 4, Ch. 667, L. 1979.

7-15-4261. Exemption from taxation for certain property. (1) The property of a municipality acquired or held for the purposes of this part is declared to be public property used for essential public and governmental purposes, and such property shall be exempt from all taxes of the municipality, the county, the state, or any political subdivision thereof.

(2) Such tax exemption shall terminate when the municipality sells, leases, or otherwise disposes of such property in an urban renewal area to a purchaser or lessee which is not a public body or other organization normally entitled to tax exemption with respect to such property.

History: En. Sec. 12, Ch. 195, L. 1959; R.C.M. 1947, 11-3912(b).

7-15-4262. Disposal of municipal property in urban renewal areas. (1) A municipality may:

(a) sell, lease, or otherwise transfer real property in an urban renewal area or any interest therein acquired by it for an urban renewal project for residential, recreational, commercial, industrial, or other uses or for public use and enter into contracts with respect thereto; or

(b) retain such property or interest only for parks and recreation, education, public transportation, public safety, health, highways, streets and alleys, administrative buildings, or civic centers, in accordance with the urban renewal project plan and subject to such covenants, conditions, and restrictions, including covenants running with the land, as it may deem to be necessary or desirable to assist in preventing the development or spread of blighted areas or otherwise to carry out the purposes of this part.

(2) Such sale, lease, other transfer, or retention and any agreement relating thereto may be made only after the approval of the urban renewal plan by the local governing body.

(3) Such real property or interest shall be sold, leased, otherwise transferred, or retained at not less than its fair value for uses in accordance with the urban renewal plan. In determining the fair value of real property for uses in accordance with the urban renewal plan, a municipality shall take into account and give consideration to the uses provided in such plan; the restrictions upon and the covenants, conditions, and obligations assumed by the purchaser or lessee or by the municipality retaining the property; and the objectives of such plan for the prevention of the recurrence of blighted areas.

(4) Real property acquired by a municipality which, in accordance with the provisions of the urban renewal plan, is to be transferred shall be transferred as rapidly as feasible, in the public interest, consistent with the carrying out of the provisions of the urban renewal plan.

History: En. Sec. 9, Ch. 195, L. 1959; amd. Sec. 1, Ch. 134, L. 1973; R.C.M. 1947, 11-3909(part).

7-15-4263. Procedure to dispose of property to private persons. (1) A municipality may dispose of real property in an urban renewal area to private persons only under such reasonable procedures as it shall prescribe or as provided in this section.

(2) (a) A municipality shall by public notice invite proposals from and make available all pertinent information to private redevelopers or any persons interested in undertaking to redevelop or rehabilitate an urban renewal area or any part thereof.

(b) Such notice shall be by publication once each week for 3 consecutive weeks in a newspaper having a general circulation in the community prior to the execution of any contract or deed to sell, lease, or otherwise transfer real property and prior to the delivery of any instrument of conveyance with respect thereto under the provisions of 7-15-4262 through 7-15-4266.

(c) Such notice shall identify the area or portion thereof and shall state that such further information as is available may be obtained at such office as shall be designated in said notice.

(3) The municipality shall consider all redevelopment or rehabilitation proposals and the financial and legal ability of the persons making such proposals to carry them out. The municipality may accept such proposals as it deems to be in the public interest and in furtherance of the purposes of this part and part 43. Thereafter, the municipality may execute, in accordance with the provisions of 7-15-4262 and 7-15-4264, and deliver contracts, deeds, leases, and other instruments of transfer.

History: En. Sec. 9, Ch. 195, L. 1959; amd. Sec. 1, Ch. 134, L. 1973; R.C.M. 1947, 11-3909(b).

7-15-4264. Obligations of transferees of municipal property in urban renewal area. (1) The purchasers or lessees and their successors and assigns shall be obligated to devote real property transferred pursuant to 7-15-4262 only to the uses specified in the urban renewal plan and may be obligated to comply with such other requirements as the municipality may determine to be in the public interest, including the obligation to begin within a reasonable time any improvements on such real property required by the urban renewal plan.

(2) The municipality in any instrument of conveyance to a private purchaser or lessee may provide that such purchaser or lessee shall be without power to sell, lease, or otherwise transfer the real property without the prior written consent of the municipality until he has completed the construction of any and all improvements which he has obligated himself to construct thereon.

(3) The inclusion in any such contract or conveyance to a purchaser or lessee of any such covenants, restrictions, or conditions (including the incorporation by reference therein of the provisions of an urban renewal plan or any part thereof) shall not prevent the recording of such contract or conveyance in the land records of the clerk and recorder or the county in which such city or town is located, in such manner as to afford actual or constructive notice thereof.

History: En. Sec. 9, Ch. 195, L. 1959; amd. Sec. 1, Ch. 134, L. 1973; R.C.M. 1947, 11-3909(part).

7-15-4265. Presumption of regularity in transfer of title. Any instrument executed by a municipality and purporting to convey any right, title, or interest in any property under this part or part 43 shall be conclusively presumed to have been executed in compliance with the provisions of this part and part 43 insofar as title or other interest of any bona fide purchasers, lessees, or transferees of such property is concerned.

History: En. Sec. 14, Ch. 195, L. 1959; R.C.M. 1947, 11-3914.

7-15-4266. Temporary use of municipal property in urban renewal area. A municipality may operate and maintain real property acquired in an urban renewal area pending the disposition of the property for redevelopment, without regard to the provisions of 7-15-4262 and 7-15-4264, for such uses and purposes as may be deemed desirable even though not in conformity with the urban renewal plan. The municipality may, after a public hearing, extend the time for a period not to exceed 3 years.

History: En. Sec. 9, Ch. 195, L. 1959; amd. Sec. 1, Ch. 134, L. 1973; R.C.M. 1947, 11-3909(c).

7-15-4267. Cooperation by public bodies. (1) For the purpose of aiding in the planning, undertaking, or carrying out of an urban renewal project located within the area in which it is authorized to act, any public body authorized by law or by this part or part 43, upon such terms, with or without consideration, as it may determine, may:

(a) dedicate, sell, convey, or lease any of its interest in any property or grant easements, licenses, or other rights or privileges therein to a municipality;

(b) incur the entire expense of any public improvements made by such public body in exercising the powers granted in this section;

(c) do any and all things necessary to aid or cooperate in the planning or carrying out of an urban renewal plan;

(d) lend, grant, or contribute funds to a municipality;

(e) enter into agreements (which may extend over any period, notwithstanding any provision or rule of law to the contrary) with a municipality or other public body respecting action to be taken pursuant to any of the powers granted by this part or part 43, including the furnishing of funds or other assistance in connection with an urban renewal project;

(f) cause to be furnished public buildings and public facilities, including parks; playgrounds; recreational, community, educational, water, sewer, or drainage facilities; or any other works which it is otherwise empowered to undertake;

(g) furnish, dedicate, close, vacate, pave, install, grade, regrade, plan, or replan streets, roads, sidewalks, ways, or other places;

(h) plan or replan or zone or rezone any part of the urban renewal area; and

(i) provide such administrative and other services as may be deemed requisite to the efficient exercise of the powers herein granted.

(2) Any sale, conveyance, lease, or agreement provided for in this section shall be made by a public body with appraisal, public notice, advertisement, or public bidding in accordance with provisions of 7-15-4263.

History: En. Sec. 13, Ch. 195, L. 1959; R.C.M. 1947, 11-3913(a), (b).

7-15-4268 through 7-14-4280 reserved.

7-15-4281. Financial authority in connection with urban renewal. (1) Every municipality shall have power to:

(a) borrow money and apply for and accept advances, loans, grants, contributions, and any other form of financial assistance from the federal government; from the state, a county, or any other public body; or from any sources, public or private, for the purposes of this part and enter into and carry out contracts in connection therewith;

(b) appropriate such funds and make such expenditures as may be necessary to carry out the purposes of this part and in accordance with state law levy taxes and assessments for such purposes;

(c) invest any urban renewal project funds held in reserves or sinking funds or any such funds which are not required for immediate disbursement in property or securities in which mutual savings banks may legally invest funds subject to their control;

(d) adopt, in accordance with state law, annual budgets for the operation of an urban renewal agency, department, or office vested with urban renewal project powers under 7-15-4231;

(e) enter, in accordance with state law, into agreements, which may extend over any period, with agencies or departments vested with urban renewal project powers under 7-15-4231 respecting action to be taken by such municipality pursuant to any of the powers granted by this part or part 43;

(f) close, vacate, plan, or replan streets, roads, sidewalks, ways, or other places and plan or replan, zone or rezone any part of the municipality in accordance with state law.

(2) A municipality may include in any application or contract for financial assistance with the federal government for an urban renewal project such conditions imposed pursuant to federal laws as the municipality may deem reasonable and appropriate and which are not inconsistent with the purposes of this part and part 43.

History: En. Sec. 7, Ch. 195, L. 1959; amd. Sec. 3, Ch. 210, L. 1969; R.C.M. 1947, 11-3907(part).

7-15-4282. Authorization for tax increment financing. Any urban renewal plan, as defined in 7-15-4206, or industrial district ordinance, adopted pursuant to 7-15-4299, may contain a provision or be amended to contain a provision for the segregation and application of tax increments, as provided in 7-15-4282 through 7-15-4292.

History: En. 11-3921 by Sec. 1, Ch. 287, L. 1974; amd. Sec. 1, Ch. 452, L. 1975; amd. Sec. 2, Ch. 532, L. 1977; amd. Sec. 31, Ch. 566, L. 1977; R.C.M. 1947, 11-3921(part); amd. Sec. 4, Ch. 712, L. 1989.

7-15-4283. Definitions related to tax increment financing. For purposes of 7-15-4282 through 7-15-4292 and 7-15-4297 through 7-15-4299, the following definitions apply unless otherwise provided or indicated by the context:

(1) "Actual taxable value" means the taxable value of taxable property at any time, as calculated from the assessment roll last equalized.

(2) "Base taxable value" means the actual taxable value of all taxable property within an urban renewal area or industrial district prior to the effective date of a tax increment financing provision. This value may be adjusted as provided in 7-15-4287 or 7-15-4293.

(3) "Incremental taxable value" means the amount, if any, by which the actual taxable value at any time exceeds the base taxable value of all property within an urban renewal area or industrial district subject to taxation.

(4) "Industrial district" means a tax increment financing industrial district created pursuant to 7-15-4299.

(5) "Industrial infrastructure development project" means a project undertaken within or for an industrial district that consists of any or all of the activities authorized by 7-15-4288.

(6) "Municipality", for the purpose of an industrial district created pursuant to 7-15-4297 through 7-15-4299 and operating pursuant to 7-15-4282 through 7-15-4293 and part 43 of this chapter, means any incorporated city or town, county, or city-county consolidated local government.

(7) "Taxes" means all taxes levied by a taxing body against property on an ad valorem basis.

(8) "Tax increment" means the collections realized from extending the tax levies, expressed in mills, of all taxing bodies in which the urban renewal area or industrial district or a part thereof is located against the incremental taxable value.

(9) "Tax increment provision" means a provision for the segregation and application of tax increments as authorized by 7-15-4282 through 7-15-4292.

(10) "Taxing body" means any city, town, county, school district, or other political subdivision or governmental unit of the state, including the state, which levies taxes against property within the urban renewal area or industrial district.

History: En. 11-3921 by Sec. 1, Ch. 287, L. 1974; amd. Sec. 1, Ch. 452, L. 1975; amd. Sec. 2, Ch. 532, L. 1977; amd. Sec. 31, Ch. 566, L. 1977; R.C.M. 1947, 11-3921(2); amd. Sec. 5, Ch. 667, L. 1979; amd. Sec. 5, Ch. 712, L. 1989.

7-15-4284. Filing of tax increment provisions of urban renewal plan or industrial district ordinance. (1) The clerk of the municipality shall file a certified copy of each urban renewal plan or industrial district ordinance or an amendment thereto containing a tax increment provision with the state, county, or city officers responsible for assessing and determining the taxable value of taxable property within the urban renewal area or industrial district ordinance or any part thereof.

(2) A certified copy of the plan, industrial district ordinance, or amendment must also be filed with the clerk or other appropriate officer of each of the affected taxing bodies.

History: En. 11-3921 by Sec. 1, Ch. 287, L. 1974; amd. Sec. 1, Ch. 452, L. 1975; amd. Sec. 2, Ch. 532, L. 1977; amd. Sec. 31, Ch. 566, L. 1977; R.C.M. 1947, 11-3921(part); amd. Sec. 6, Ch. 712, L. 1989.

7-15-4285. Determination and report of original, actual, and incremental taxable values. The officer or officers responsible for assessing and determining the taxable value of the taxable property located within the urban renewal area or industrial district shall, immediately upon receipt of the tax increment provision and each year thereafter, calculate and report to the municipality and to any other affected taxing body the base, actual, and incremental taxable values of such property.

History: En. 11-3921 by Sec. 1, Ch. 287, L. 1974; amd. Sec. 1, Ch. 452, L. 1975; amd. Sec. 2, Ch. 532, L. 1977; amd. Sec. 31, Ch. 566, L. 1977; R.C.M. 1947, 11-3921(part); amd. Sec. 6, Ch. 667, L. 1979; amd. Sec. 7, Ch. 712, L. 1989.

7-15-4286. Procedure to determine and disburse tax increment. (1) Mill rates of taxing bodies for taxes levied after the effective date of the tax increment provision shall be calculated on the basis of the sum of the taxable value, as shown by the last equalized assessment roll, of all taxable property located outside the urban renewal area or industrial district and the base taxable value of all taxable property located within the urban renewal area or industrial district. The mill rate so determined shall be levied against the sum of the actual taxable value of all taxable property located within as well as outside the urban renewal area or industrial district.

(2) (a) The tax increment, if any, received in each year from the levy of the combined mill rates of all the affected taxing bodies against the incremental taxable value within the urban renewal area or industrial district, except for the university system mills levied and assessed against property as defined in 7-15-4292(6)(a), shall be paid into a special fund held by the treasurer of the municipality and used as provided in 7-15-4282 through 7-15-4292.

(b) The balance of the taxes collected in each year shall be paid to each of the taxing bodies as otherwise provided by law.

History: En. 11-3921 by Sec. 1, Ch. 287, L. 1974; amd. Sec. 1, Ch. 452, L. 1975; amd. Sec. 2, Ch. 532, L. 1977; amd. Sec. 31, Ch. 566, L. 1977; R.C.M. 1947, 11-3921(4); amd. Sec. 7, Ch. 667, L. 1979; amd. Sec. 8, Ch. 712, L. 1989; amd. Sec. 4, Ch. 441, L. 1991.

7-15-4287. Provision for use of portion of tax increment. (1) At the time of adoption of a tax increment provision or at any time subsequent thereto, the governing body of the municipality may provide that a portion of the tax increment from the incremental taxable value shall be released from segregation by an adjustment of the base taxable value, provided that:

(a) all principal and interest then due on bonds for which the tax increment has been pledged has been fully paid; and

(b) the tax increment resulting from the smaller incremental value is determined by the governing body to be sufficient to pay all principal and interest due later on the bonds.

(2) The adjusted base value determined under subsection (1) shall be reported by the clerk to the officers and taxing bodies to which the increment provision is reported.

(3) Thereafter, the adjusted base value is used in determining the mill rates of affected taxing bodies unless the tax increment resulting from the adjustment is determined to be insufficient for this purpose. In this case, the governing body must reduce the base value to the amount originally determined or to a higher amount necessary to provide tax increments sufficient to pay all principal and interest due on the bonds.

History: En. 11-3921 by Sec. 1, Ch. 287, L. 1974; amd. Sec. 1, Ch. 452, L. 1975; amd. Sec. 2, Ch. 532, L. 1977; amd. Sec. 31, Ch. 566, L. 1977; R.C.M. 1947, 11-3921(6); amd. Sec. 8, Ch. 667, L. 1979.

7-15-4288. Costs that may be paid by tax increment financing. The tax increments may be used by the municipality to pay the following costs of or incurred in connection with an urban renewal project or industrial infrastructure development project:

(1) land acquisition;

(2) demolition and removal of structures;

(3) relocation of occupants;

(4) the acquisition, construction, and improvement of infrastructure or industrial infrastructure, which includes streets, roads, curbs, gutters, sidewalks, pedestrian malls, alleys, parking lots and offstreet parking facilities, sewers, sewer lines, sewage treatment facilities, storm sewers, waterlines,

waterways, water treatment facilities, natural gas lines, electrical lines, telecommunications lines, rail lines, rail spurs, bridges, publicly owned buildings, and any public improvements authorized by parts 41 through 45 of chapter 12, parts 42 and 43 of chapter 13, and part 47 of chapter 14 and items of personal property to be used in connection with improvements for which the foregoing costs may be incurred;

(5) costs incurred in connection with the redevelopment activities allowed under 7-15-4233;

(6) acquisition of infrastructure-deficient areas or portions of areas;

(7) administrative costs associated with the management of the industrial district;

(8) assemblage of land for development or redevelopment by private enterprise or public agencies, including sale, initial leasing, or retention by the municipality itself at its fair value;

(9) the compilation and analysis of pertinent information required to adequately determine the infrastructure needs of secondary, value-adding industries in the industrial district;

(10) the connection of the industrial district to existing infrastructure outside the industrial district;

(11) the provision of direct assistance, through industrial infrastructure development projects, to secondary, value-adding industries to assist in meeting their infrastructure and land needs within the industrial district; and

(12) the acquisition, construction, or improvement of facilities or equipment for reducing, preventing, abating, or eliminating pollution.

History: En. 11-3921 by Sec. 1, Ch. 287, L. 1974; amd. Sec. 1, Ch. 452, L. 1975; amd. Sec. 2, Ch. 532, L. 1977; amd. Sec. 31, Ch. 566, L. 1977; R.C.M. 1947, 11-3921(part); amd. Sec. 1, Ch. 147, L. 1981; amd. Sec. 9, Ch. 712, L. 1989; amd. Sec. 1, Ch. 737, L. 1991; amd. Sec. 1, Ch. 500, L. 1993.

7-15-4289. Use of tax increments for bond payments. The tax increment may be pledged to the payment of the principal of premiums, if any, and interest on bonds which the municipality may issue for the purpose of providing funds to pay such costs.

History: En. 11-3921 by Sec. 1, Ch. 287, L. 1974; amd. Sec. 1, Ch. 452, L. 1975; amd. Sec. 2, Ch. 532, L. 1977; amd. Sec. 31, Ch. 566, L. 1977; R.C.M. 1947, 11-3921(part); amd. Sec. 9, Ch. 667, L. 1979.

7-15-4290. Use of property taxes and other revenues for payment of bonds. (1) The tax increment derived from an urban renewal area may be pledged for the payment of revenue bonds issued for urban renewal projects or of general obligation bonds, revenue bonds, or special assessment bonds issued to pay urban renewal costs described in 7-15-4288 and 7-15-4289. The tax increment derived from an industrial district may be pledged for the payment of revenue bonds issued for industrial infrastructure development projects or of general obligation bonds, revenue bonds, or special assessment bonds issued to pay industrial district costs described in 7-15-4288 and 7-15-4289. Any municipality issuing such bonds may, by resolution of its governing body, enter into a covenant for the security of the bondholders, detailing the calculation and adjustment of the tax increment and the taxable value on which it is based and, after a public hearing, pledging or appropriating other revenues of the municipality, except property taxes prohibited by subsection (2), to the payment of such bonds if collections of the tax increment are insufficient.

(2) No property taxes, except the tax increment derived from property within the urban renewal area or industrial district and tax collections used to pay for services provided to the municipality by an urban renewal project or an industrial infrastructure development project, may be applied to the payment of bonds issued pursuant to 7-15-4301 for which a tax increment has been pledged.

History: En. 11-3921 by Sec. 1, Ch. 287, L. 1974; amd. Sec. 1, Ch. 452, L. 1975; amd. Sec. 2, Ch. 532, L. 1977; amd. Sec. 31, Ch. 566, L. 1977; R.C.M. 1947, 11-3921(part); amd. Sec. 10, Ch. 667, L. 1979; amd. Sec. 1, Ch. 615, L. 1987; amd. Sec. 10, Ch. 712, L. 1989.

7-15-4291. Agreements to remit unused portion of tax increments. The municipality may also enter into agreements with the other affected taxing bodies to remit to such taxing bodies any portion of the annual tax increment not currently required for the payment of the costs listed in 7-15-4288 or pledged to the payment of the principal of premiums, if any, and interest on the bonds referred to in 7-15-4289.

History: En. 11-3921 by Sec. 1, Ch. 287, L. 1974; amd. Sec. 1, Ch. 452, L. 1975; amd. Sec. 2, Ch. 532, L. 1977; amd. Sec. 31, Ch. 566, L. 1977; R.C.M. 1947, 11-3921(part).

7-15-4292. Termination of tax increment financing — exception — reduction in tax increment distribution. (1) The tax increment provision shall terminate upon the later of:

(a) the 15th year following its adoption or, if the tax increment provision was adopted prior to January 1, 1980, upon the 17th year following adoption; or

(b) the payment or provision for payment in full or discharge of all bonds for which the tax increment has been pledged and the interest thereon.

(2) Any amounts remaining in the special fund or any reserve fund after termination of the tax increment provision shall be distributed among the various taxing bodies in proportion to their property tax revenues from the district.

(3) After termination of the tax increment provision, all taxes shall be levied upon the actual taxable value of the taxable property in the urban renewal area or the industrial district and shall be paid into the funds of the respective taxing bodies.

(4) Bonds secured in whole or in part by a tax increment provision may not be issued after the 15th anniversary of tax increment provisions adopted after January 1, 1980, and the 17th anniversary of tax increment provisions adopted prior to January 1, 1980. However, if bonds secured by a tax increment provision are outstanding on the applicable anniversary, additional bonds secured by the tax increment provision may be issued if the final maturity date of the bonds is not later than the final maturity date of any bonds then outstanding and secured by the tax increment provision.

(5) (a) If a municipality issues bonds secured in whole or in part by a tax increment provision after the 10th year following a tax increment provision adopted after January 1, 1980, or after the 12th year following a tax increment provision adopted before January 1, 1980, it is not entitled to the full distribution provided in 20-9-360(2).

(b) The state treasurer shall reduce the distribution to the municipality in each fiscal year after the fiscal year in which the bonds referred to in subsection (5)(a) are issued by an amount equal to the increased taxable value of the project property multiplied by the total number of mills levied and assessed for school district purposes against the property in the previous calendar year. The department of revenue shall certify to the state treasurer by September 1 of each year the increased taxable value of the project property.

(c) If the municipality issues more than one bond series after January 1, 1991, the distribution to the municipality as provided in 20-9-360(2) is reduced, as determined in subsection (5)(b), by the sum of the amounts of each bond issue.

(6) For the purposes of subsection (5):

(a) "project property" is the value of property within an urban renewal area affected by an urban renewal project to be financed in whole or in part from the proceeds of the bonds issued pursuant to subsection (5)(a), certified by the municipality to the department of revenue at the time the bonds are issued and identified by a tax identification number. Property is affected by an urban renewal project if the property:

(i) is to be acquired or improved as part of the urban renewal project;

(ii) is located on property that is to be acquired or improved as part of the urban renewal project;

(iii) is contiguous to or located on property contiguous to, property referred to in subsection (6)(a)(i) or (6)(a)(ii), including adjacent property separated by a road, stream, street, or railroad; or

(iv) is included in an agreement between a person and the municipality in connection with the urban renewal project for the issuance of the bonds and if under the agreement, the person undertakes to develop or redevelop the property.

(b) "increased taxable value" means the difference between the taxable value of the project property for the current fiscal year and the taxable value of the project property for the fiscal year in which the bonds were issued.

History: En. 11-3921 by Sec. 1, Ch. 287, L. 1974; amd. Sec. 1, Ch. 452, L. 1975; amd. Sec. 2, Ch. 532, L. 1977; amd. Sec. 31, Ch. 566, L. 1977; R.C.M. 1947, 11-3921(7); amd. Sec. 1, Ch. 251, L. 1985; amd. Sec. 11, Ch. 712, L. 1989; amd. Sec. 3, Ch. 441, L. 1991.

7-15-4293. Adjustment of base taxable value following change of law. If the base taxable value of an urban renewal area or an industrial district is affected after its original determination by a statutory, administrative, or judicial change in the method of appraising property, the tax rate applied to it, the tax exemption status of property, or the taxable valuation of property if the change in taxable valuation is based on conditions existing at the time the base year was established, the governing body of the municipality may request the department of revenue or its agents to calculate the base taxable value as it would have been on the date of the original determination had the change been in effect on that date. The governing body may adjust the base taxable value to that value reported by the department of revenue, under the provisions of 7-15-4287.

History: En. Sec. 12, Ch. 667, L. 1979; amd. Sec. 2, Ch. 147, L. 1981; amd. Sec. 12, Ch. 712, L. 1989.

7-15-4294 through 7-14-4296 reserved.

7-15-4297. Short title. Sections 7-15-4297 through 7-15-4299 may be cited as the "Tax Increment Financing Industrial Development Act".

History: En. Sec. 1, Ch. 712, L. 1989.

7-15-4298. Legislative findings. The legislature finds and declares that:

(1) infrastructure-deficient areas exist in the municipalities of the state and constitute a serious impediment to the development of infrastructure-intensive, secondary, value-adding economic development in Montana;

(2) municipalities lack sufficient capital to rectify the infrastructure shortage in infrastructure-deficient areas, thus impeding the ability of municipalities to achieve economic growth through the development of secondary, value-adding industries;

(3) the creation of industrial infrastructure is a matter of state policy and state concern because the state and its municipalities will continue to suffer economic dislocation due to the lack of secondary, value-adding industries; and

(4) the state's tax increment financing laws should be used to encourage the creation of areas in which needed industrial infrastructure for secondary, value-adding industries could be developed.

History: En. Sec. 2, Ch. 712, L. 1989.

7-15-4299. Industrial districts. (1) A local governing body, by ordinance and following a public hearing, may authorize the creation of an industrial district for industrial infrastructure development projects if the proposed industrial district:

(a) consists of a continuous area with an accurately described boundary;

(b) is zoned for light or heavy industrial use in accordance with the area master planning document;

(c) does not include any property included within an existing urban renewal area district created pursuant to this part;

(d) is found to be deficient in infrastructure improvements for industrial development; and

(e) has as its purpose the development of infrastructure to encourage the growth and retention of secondary, value-adding industries.

(2) An industrial district may use tax increment financing pursuant to the provisions of 7-15-4282 through 7-15-4293.

History: En. Sec. 3, Ch. 712, L. 1989.

Part 43

Urban Renewal
Continued

7-15-4301. Authorization to issue urban renewal bonds, industrial infrastructure development bonds, and refunding bonds. (1) A municipality shall have the power to:

(a) issue bonds from time to time in its discretion, to finance the undertaking of any urban renewal project or industrial infrastructure development project under this part and part 42, including, without limiting the generality thereof, the payment of principal and interest upon any advances for surveys and plans for urban renewal projects and industrial infrastructure development projects; and

(b) issue refunding bonds for the payment or retirement of such bonds previously issued by it.

(2) Such bonds shall not pledge the general credit of the municipality and shall be made payable, as to both principal and interest, solely from the income, proceeds, revenues, and funds of the municipality derived from or held in connection with its undertaking and carrying out of urban renewal projects or industrial infrastructure development projects under this part and part 42, including the tax increment received and pledged by the municipality pursuant to 7-15-4282 through 7-15-4292, and, if such income, proceeds, revenues, and funds of the municipality are insufficient for such payment, from other revenues of the municipality pledged to such payment. Payment of such bonds, both as to principal and interest, may be further secured by a pledge of any loan, grant, or contribution from the federal government or other source in aid of any urban renewal projects or industrial infrastructure development projects of the municipality under this part and part 42 or by a mortgage on all or part of any such projects.

(3) Bonds issued under this section shall be authorized by resolution or ordinance of the local governing body.

History: En. Sec. 10, Ch. 195, L. 1959; amd. Sec. 11-109, Ch. 264, L. 1963; amd. Sec. 21, Ch. 234, L. 1971; amd. Sec. 4, Ch. 287, L. 1974; amd. Sec. 1, Ch. 532, L. 1977; R.C.M. 1947, 11-3910(part); amd. Sec. 11, Ch. 667, L. 1979; amd. Sec. 2, Ch. 615, L. 1987; amd. Sec. 13, Ch. 712, L. 1989.

7-15-4302. Authorization to issue general obligation bonds. (1) For the purpose of 7-15-4267 or for the purpose of aiding in the planning, undertaking, or carrying out of an urban renewal project or an industrial infrastructure development project of a municipality, the municipality, in addition to any authority to issue bonds pursuant to 7-15-4301, may issue and sell its general obligation bonds.

(2) Any bonds issued pursuant to this section shall be issued in the manner and within the limitations prescribed by the laws of this state for the issuance and authorization of bonds by such municipality for public purposes generally.

(3) Aiding in the planning, undertaking, or carrying out of an approved urban renewal project or an industrial infrastructure development project is considered a single purpose for the issuance of general obligation bonds, and the proceeds of the bonds authorized for any such project may be used to finance the exercise of any and all powers conferred upon the municipality by this part and part 42 which are necessary or proper to complete the project in accordance with the approved plan or industrial district ordinance and any modification thereof duly adopted by the local governing body.

History: (1), (2)En. Sec. 13, Ch. 195, L. 1959; Sec. 11-3913, R.C.M. 1947; (3)En. Sec. 6, Ch. 195, L. 1959; amd. Sec. 2, Ch. 38, L. 1965; amd. Sec. 2, Ch. 210, L. 1969; amd. Sec. 18, Ch. 158, L. 1971; Sec. 11-3906, R.C.M. 1947; R.C.M. 1947, 11-3906(part), 11-3913(c); amd. Sec. 18, Ch. 253, L. 1979; amd. Sec. 14, Ch. 712, L. 1989.

7-15-4303. Bonds to be fully negotiable. Any provision of any law to the contrary notwithstanding, any bonds issued pursuant to this part and part 42 shall be fully negotiable.

History: **En. Sec. 10, Ch. 195, L. 1959; amd. Sec. 11-109, Ch. 264, L. 1963; amd. Sec. 21, Ch. 234, L. 1971; amd. Sec. 4, Ch. 287, L. 1974; amd. Sec. 1, Ch. 532, L. 1977; R.C.M. 1947, 11-3910(part).**

7-15-4304. Presumption of regularity of bond issuance. In any suit, action, or proceeding involving the validity or enforceability of any bond issued under this part and part 42 or the security therefor, any such bond reciting in substance that it has been issued by the municipality in connection with an urban renewal project or industrial infrastructure development project as herein defined shall be conclusively deemed to have been issued for such purpose and such project shall be conclusively deemed to have been planned, located, and carried out in accordance with the provisions of this part and part 42.

History: **En. Sec. 10, Ch. 195, L. 1959; amd. Sec. 11-109, Ch. 264, L. 1963; amd. Sec. 21, Ch. 234, L. 1971; amd. Sec. 4, Ch. 287, L. 1974; amd. Sec. 1, Ch. 532, L. 1977; R.C.M. 1947, 11-3910(f); amd. Sec. 15, Ch. 712, L. 1989.**

7-15-4305. Validity and sufficiency of signatures on bonds. In case any of the public officials of the municipality whose signatures appear on any bonds or coupons issued under this part and part 42 shall cease to be such officials before the delivery of such bonds, such signatures shall, nevertheless, be valid and sufficient for all purposes the same as if such officials had remained in office until such delivery.

History: **En. Sec. 10, Ch. 195, L. 1959; amd. Sec. 11-109, Ch. 264, L. 1963; amd. Sec. 21, Ch. 234, L. 1971; amd. Sec. 4, Ch. 287, L. 1974; amd. Sec. 1, Ch. 532, L. 1977; R.C.M. 1947, 11-3910(part).**

7-15-4306. Bonds as legal investments. (1) All banks, trust companies, bankers, savings banks and institutions, building and loan associations, savings and loan associations, investment companies, and other persons carrying on a banking or investment business; all insurance companies, insurance associations, and other persons carrying on an insurance business; and all executors, administrators, curators, trustees, and other fiduciaries may legally invest any sinking funds, money, or other funds belonging to them or within their control in any bonds or other obligations issued by a municipality pursuant to this part and part 42, provided that such bonds and other obligations shall be secured by an agreement between the issuer and the federal government in which the issuer agrees to borrow from the federal government and the federal government agrees to lend to the issuer, prior to the maturity of such bonds or other obligations, money in an amount which (together with any other money irrevocably committed to the payment of interest on such bonds or other obligations) will suffice to pay the principal of such bonds or other obligations with interest to maturity thereon, which money under the terms of said agreement is required to be used for the purpose of paying the principal of and the interest on such bonds or other obligations at their maturity.

(2) Such bonds and other obligations shall be authorized security for all public deposits. It is the purpose of this section to authorize any persons, political subdivisions, and officers, public or private, to use any funds owned or controlled by them for the purchase of any such bonds or other obligations.

(3) Nothing contained in this section with regard to legal investments shall be construed as relieving any person of any duty of exercising reasonable care in selecting securities.

History: **En. Sec. 11, Ch. 195, L. 1959; R.C.M. 1947, 11-3911.**

7-15-4307. Tax exemption for bonds. Bonds issued under the provisions of this part and part 42 are declared to be issued for an essential public and governmental purpose and, together with interest thereon and income therefrom, shall be exempted from all taxes.

History: **En. Sec. 10, Ch. 195, L. 1959; amd. Sec. 11-109, Ch. 264, L. 1963; amd. Sec. 21, Ch. 234, L. 1971; amd. Sec. 4, Ch. 287, L. 1974; amd. Sec. 1, Ch. 532, L. 1977; R.C.M. 1947, 11-3910(part).**

7-15-4308 through 7-15-4320 reserved.

7-15-4321. Nature of urban renewal bonds. Bonds issued under 7-15-4301 shall not constitute an indebtedness within the meaning of any constitutional or statutory debt limitation or restriction and shall be subject only to the provisions of the Uniform Commercial Code and the limitations of this part and part 42.

History: **En. Sec. 10, Ch. 195, L. 1959; amd. Sec. 11-109, Ch. 264, L. 1963; amd. Sec. 21, Ch. 234, L. 1971; amd. Sec. 4, Ch. 287, L. 1974; amd. Sec. 1, Ch. 532, L. 1977; R.C.M. 1947, 11-3910(part).**

7-15-4322. Details relating to urban renewal bonds. (1) Bonds issued under 7-15-4301 may be issued in one or more series and must bear a date or dates, be payable upon demand or mature at a time or times, bear interest as provided in 17-5-102, be in denomination or denominations, be in form (either coupon or registered), carry conversion or registration privileges, have rank or priority, be executed in a manner, be payable in a medium of payment at a place or places, be subject to terms of redemption (with or without premium), be secured in a manner, and have other characteristics as may be provided by the resolution, ordinance, or trust indenture or a mortgage authorized pursuant to the resolution, ordinance, or trust indenture.

(2) (a) The bonds may be sold at not less than 97% of par, at public or private sale, or may be exchanged for other bonds on the basis of par.

(b) The bonds may be sold to the federal government at private sale at not less than par, and if less than all of the authorized principal amount of the bonds is sold to the federal government, the balance may be sold, at public or private sale, at not less than 97% of par at an interest cost to the municipality of not to exceed the interest cost of the portion of the bonds sold to the federal government.

History: **En. Sec. 10, Ch. 195, L. 1959; amd. Sec. 11-109, Ch. 264, L. 1963; amd. Sec. 21, Ch. 234, L. 1971; amd. Sec. 4, Ch. 287, L. 1974; amd. Sec. 1, Ch. 532, L. 1977; R.C.M. 1947, 11-3910(part); amd. Sec. 19, Ch. 253, L. 1979; amd. Sec. 7, Ch. 500, L. 1981; amd. Sec. 1, Ch. 11, L. 1983; amd. Sec. 25, Ch. 370, L. 1987; amd. Sec. 39, Ch. 423, L. 1995.**

Compiler's Comments

1995 Amendment: Chapter 423 in (2)(a) and (2)(b) reduced sale price from 98% of par to 97% of par; and made minor changes in style. Amendment effective April 13, 1995.

Applicability: Section 53, Ch. 423, L. 1995, provided: "[This act] applies to bonds issued under the provisions of [this act] after [the effective date of this act]." Effective April 13, 1995.

7-15-4323. Redemption of urban renewal bonds. Every municipality shall have power to redeem such bonds as have been issued pursuant to

7-15-4301 at the redemption price established therein or to purchase such bonds at less than redemption price. All such bonds so redeemed or purchased shall be canceled.

History: En. Sec. 7, Ch. 195, L. 1959; amd. Sec. 3, Ch. 210, L. 1969; R.C.M. 1947, 11-3907(part).

7-15-4324. Special bond provisions when tax increment financing is involved. (1) Bonds issued under this part for which a tax increment is pledged pursuant to 7-15-4282 through 7-15-4292 shall be designed to mature not later than 25 years from their date of issue and shall mature in such years and amounts that the principal and interest due on the bonds in each year shall not exceed the estimated tax increment and other estimated revenues, including proceeds of the bonds available for payment of interest thereon, pledged to their payment to be received in such year.

(2) The governing body, in the resolution or ordinance authorizing the bonds, shall determine the estimated tax increment and other revenues, if any, for each year the bonds are to be outstanding. In calculating the costs under 7-15-4288 for which the bonds are issued, the municipality may include an amount sufficient to pay interest on the bonds prior to receipt of tax increments pledged and sufficient for the payment thereof and to fund any reserve fund in respect of the bonds.

History: En. Sec. 10, Ch. 195, L. 1959; amd. Sec. 11-109, Ch. 264, L. 1963; amd. Sec. 21, Ch. 234, L. 1971; amd. Sec. 4, Ch. 287, L. 1974; amd. Sec. 1, Ch. 532, L. 1977; R.C.M. 1947, 11-3910(g).

Part 44

Municipal Housing Authorities

7-15-4401. Findings and policy. It is hereby declared that:

(1) unsanitary or unsafe dwelling accommodations exist in urban areas throughout the state, and such unsafe or unsanitary conditions arise from overcrowding and concentration of population, the obsolete and poor conditions of buildings, improper planning, excessive land coverage, lack of proper light, air, and space, unsanitary design and arrangement, lack of proper sanitary facilities, and the existence of conditions which endanger life or property by fire and other causes;

(2) in such urban areas, many persons of low income are forced to reside in unsanitary or unsafe dwelling accommodations;

(3) in such urban areas, there is a lack of safe or sanitary dwelling accommodations available to all the inhabitants thereof, and consequently, many persons of low income are forced to occupy overcrowded and congested dwelling accommodations;

(4) these conditions cause an increase in and spread of disease and crime and constitute a menace to the health, safety, morals, and welfare of the citizens of the state and impair economic values;

(5) these conditions cannot be remedied by the ordinary operations of private enterprise;

(6) the clearance, replanning, and reconstruction of the areas in which unsanitary or unsafe housing conditions exist and the providing of safe and sanitary dwelling accommodations for persons of low income are public uses

and purposes for which public money may be spent and private property acquired;

(7) it is in the public interest that work on such projects be instituted as soon as possible; and

(8) the necessity for the provisions hereinafter enacted is hereby declared, as a matter of legislative determination, to be in the public interest.

History: En. Sec. 2, Ch. 140, L. 1935; re-en. Sec. 5309.2, R.C.M. 1935; amd. Sec. 1, Ch. 153, L. 1941; R.C.M. 1947, 35-102(part).

7-15-4402. Definitions. As used in this part or part 45, unless the context clearly indicates otherwise, the following definitions apply:

(1) "Authority" or "housing authority" means a public body and a body corporate and politic organized in accordance with the provisions of this part for the purposes, with the powers, and subject to the restrictions hereinafter set forth.

(2) "Bonds" means any bonds, interim certificates, notes, debentures, or other obligations of the authority issued pursuant to this part or part 45.

(3) "City" means any city which is or is about to be included in the territorial boundaries of an authority.

(4) "City clerk" and "mayor" mean the clerk and mayor, respectively, of the city or the officers thereof charged with the duties customarily imposed on the clerk and mayor.

(5) "Commissioner" means one of the members of an authority appointed in accordance with the provisions of this part.

(6) "Community facilities" means real and personal property and buildings and equipment for recreational or social assemblies and for educational, health, or welfare purposes and necessary utilities, when designed primarily for the benefit and use of the housing authority and/or the occupants of the dwelling accommodations.

(7) "Contract" means any agreement of an authority with or for the benefit of an obligee, whether contained in a resolution, trust indenture, mortgage, lease, bond, or other instrument.

(8) "Council" means the legislative body, council, board of commissioners, board of trustees, or other body charged with governing a city.

(9) "Elderly families" means families the head of which (or his spouse) is 60 years of age or over and who otherwise qualify as persons of low income within the meaning of the definition set forth in subsection (16).

(10) "Federal government" means the United States or any agency or instrumentality, corporate or otherwise, of the United States.

(11) "Government" means the state and federal governments and any subdivision, agency, or instrumentality, corporate or otherwise, of either.

(12) (a) "Housing project" means all real and personal property, buildings and improvements, stores, offices, lands for farming and gardening, and community facilities acquired or constructed or to be acquired or constructed pursuant to a single plan or undertaking:

(i) to demolish, clear, remove, alter, or repair unsanitary or unsafe housing; and/or

(ii) to provide safe and sanitary dwelling accommodations for persons of low income.

(b) The term "housing project" may also be applied to the planning of the buildings and improvements; the acquisition of property; the demolition of existing structures; the construction, reconstruction, alteration, and repair of the improvements; and all other work in connection therewith.

(13) "Mortgage" means deeds of trust, mortgages, building and loan contracts, or other instruments conveying real or personal property as security for bonds and conferring a right to foreclose and cause a sale thereof.

(14) "Municipality" means any city, town, or incorporated village which is located within the territorial boundaries of an authority.

(15) "Obligee of the authority" or "obligee" means any bondholder, trustee for any bondholder, any lessor demising property to the authority used in connection with a housing project or any assignee or assignees of such lessor's interest or any part thereof, and the United States when it is a party to any contract with the authority.

(16) "Persons of low income" means persons or families who lack the amount of income which is necessary (as determined by the authority undertaking the housing project) to enable them, without financial assistance, to live in decent, safe, and sanitary dwellings without overcrowding.

(17) "Real property" means lands, lands under water, structures, and any and all easements, franchises, and incorporeal hereditaments and every estate and right therein, legal and equitable, including terms for years and liens by way of judgment, mortgage, or otherwise.

(18) "State" means the state of Montana.

(19) "Trust indenture" means instruments pledging the revenues of real or personal properties but not conveying such properties or conferring a right to foreclose and cause a sale thereof.

History: En. Sec. 3, Ch. 140, L. 1935; re-en. Sec. 5309.3, R.C.M. 1935; amd. Sec. 1, Ch. 193, L. 1957; amd. Sec. 1, Ch. 133, L. 1973; R.C.M. 1947, 35-103; amd. Sec. 20, Ch. 253, L. 1979.

7-15-4403. Petition to create municipal housing authority — hearing and notice. (1) Any 25 residents of a city and of the area within 10 miles from the territorial boundaries thereof may file a petition with the city clerk setting forth that there is a need for an authority to function in the city and said surrounding area.

(2) Upon the filing of such a petition, the city clerk shall give notice of the time, place, and purpose of a public hearing at which the council will determine the need for an authority in the city and said surrounding area.

History: En. Sec. 4, Ch. 140, L. 1935; re-en. Sec. 5309.4, R.C.M. 1935; amd. Sec. 1, Ch. 68, L. 1953; amd. Sec. 3, Ch. 193, L. 1957; R.C.M. 1947, 35-104(part).

7-15-4404. Notice of hearing on petition. The notice required by 7-15-4403 shall be given at the city's expense by publishing a notice at least 10 days preceding the day on which the hearing is to be held, in a newspaper having a general circulation in the city and said surrounding area or, if there be no such newspaper, by posting such a notice in at least three public places within the city at least 10 days preceding the day on which the hearing is to be held.

History: En. Sec. 4, Ch. 140, L. 1935; re-en. Sec. 5309.4, R.C.M. 1935; amd. Sec. 1, Ch. 68, L. 1953; amd. Sec. 3, Ch. 193, L. 1957; R.C.M. 1947, 35-104(part).

7-15-4405. Hearing on petition. Upon the date fixed for said hearing held upon notice as provided in 7-15-4403 and 7-15-4404, an opportunity to be heard shall be granted to all residents and taxpayers of the city and said surrounding area and to all other interested persons.

History: En. Sec. 4, Ch. 140, L. 1935; re-en. Sec. 5309.4, R.C.M. 1935; amd. Sec. 1, Ch. 68, L. 1953; amd. Sec. 3, Ch. 193, L. 1957; R.C.M. 1947, 35-104(part).

7-15-4406. Decision of city council. (1) After the hearing, the council shall determine:

(a) whether unsanitary or unsafe inhabited dwelling accommodations exist in the city and the surrounding area; and/or

(b) whether there is a lack of safe or sanitary dwelling accommodations in the city and the surrounding area available for all the inhabitants thereof.

(2) If it determines that either or both of the above-enumerated conditions exist, the council shall draft an ordinance authorizing the mayor to appoint seven commissioners to act as an authority.

(3) If the council, after a hearing, determines that neither of the above-enumerated conditions exist, it shall adopt a resolution denying the petition. After 3 months have expired from the date of the denial of a petition, subsequent petitions may be filed and new hearings and determinations made on the petitions.

History: En. Sec. 4, Ch. 140, L. 1935; re-en. Sec. 5309.4, R.C.M. 1935; amd. Sec. 1, Ch. 68, L. 1953; amd. Sec. 3, Ch. 193, L. 1957; R.C.M. 1947, 35-104(part); amd. Sec. 1, Ch. 514, L. 1989.

7-15-4407. Criteria for determining if unsafe or unsanitary dwelling accommodations exist. In determining whether dwelling accommodations are unsafe or unsanitary, the council shall take into consideration the following:

(1) the physical condition and age of the buildings;

(2) the degree of overcrowding;

(3) the percentage of land coverage;

(4) the light and air available to the inhabitants of such dwelling accommodations;

(5) the size and arrangement of the rooms;

(6) the sanitary facilities; and

(7) the extent to which conditions exist in such buildings which endanger life or property by fire or other causes.

History: En. Sec. 4, Ch. 140, L. 1935; re-en. Sec. 5309.4, R.C.M. 1935; amd. Sec. 1, Ch. 68, L. 1953; amd. Sec. 3, Ch. 193, L. 1957; R.C.M. 1947, 35-104(part).

7-15-4408. Voter approval required to create housing authority. The ordinance authorized by 7-15-4406(2) is not effective until it has been approved by a majority vote of the registered electors within the city limits voting either at a special election held in conjunction with a regular or primary election or at a general election.

History: En. Sec. 4, Ch. 140, L. 1935; re-en. Sec. 5309.4, R.C.M. 1935; amd. Sec. 1, Ch. 68, L. 1953; amd. Sec. 3, Ch. 193, L. 1957; R.C.M. 1947, 35-104(part); amd. Sec. 344, Ch. 571, L. 1979; amd. Sec. 55, Ch. 387, L. 1995.

Compiler's Comments

1995 Amendment: Chapter 387 near end inserted "held in conjunction with a regular or primary election"; and made minor changes in style.

7-15-4409. Application for incorporation. (1) The commissioners shall present to the secretary of state an application signed by them which shall set forth (without any detail other than the mere recital):

(a) that a notice has been given and public hearing has been held as aforesaid, that the council made the aforesaid determination after such hearing, and that the mayor has appointed them as commissioners;

(b) the name and official residence of each of the commissioners, together with a certified copy of the appointment evidencing their right to office, the date and place of induction into and taking oath of office, and that they desire the housing authority to become a public body and a body corporate and politic under this part;

(c) the term of office of each of the commissioners;

(d) the name which is proposed for the corporation; and

(e) the location of the principal office of the proposed corporation.

(2) The application shall be subscribed and sworn to by each of said commissioners before an officer authorized by the laws of the state to take and certify oaths, who shall certify upon the application that he personally knows the commissioners and knows them to be the officers as asserted in the application and that each subscribed and swore thereto in the officer's presence.

History: En. Sec. 4, Ch. 140, L. 1935; re-en. Sec. 5309.4, R.C.M. 1935; amd. Sec. 1, Ch. 68, L. 1953; amd. Sec. 3, Ch. 193, L. 1957; R.C.M. 1947, 35-104(part).

7-15-4410. Processing of application by secretary of state. (1) The secretary of state shall examine the application, and if he finds that the name proposed for the corporation is not identical with that of a person or of any other corporation of this state or so nearly similar as to lead to confusion and uncertainty, he shall receive and file it and shall record it in an appropriate book of record in his office.

(2) When the application has been made, filed, and recorded, the secretary of state shall make and issue to the commissioners a certificate of incorporation pursuant to this part, under the seal of the state, and shall record the same with the application.

History: En. Sec. 4, Ch. 140, L. 1935; re-en. Sec. 5309.4, R.C.M. 1935; amd. Sec. 1, Ch. 68, L. 1953; amd. Sec. 3, Ch. 193, L. 1957; R.C.M. 1947, 35-104(part).

7-15-4411. Effect of filing and recording application. When the application has been made, filed, and recorded as provided in 7-15-4409 and 7-15-4410, the authority shall constitute a public body and a body corporate and politic under the name proposed in the application.

History: En. Sec. 4, Ch. 140, L. 1935; re-en. Sec. 5309.4, R.C.M. 1935; amd. Sec. 1, Ch. 68, L. 1953; amd. Sec. 3, Ch. 193, L. 1957; R.C.M. 1947, 35-104(part).

7-15-4412. Presumption of regularity in creation of municipal housing authority. (1) In any suit, action, or proceeding involving the validity or enforcement of or relating to any contract of the authority, the authority shall be conclusively deemed to have been established in accordance with the provisions of this part upon proof of the issuance of the aforesaid certificate by the secretary of state.

(2) A copy of such certificate, duly certified by the secretary of state, shall be admissible in evidence in any such suit, action, or proceeding and shall be conclusive proof of the filing and contents thereof.

History: En. Sec. 4, Ch. 140, L. 1935; re-en. Sec. 5309.4, R.C.M. 1935; amd. Sec. 1, Ch. 68, L. 1953; amd. Sec. 3, Ch. 193, L. 1957; R.C.M. 1947, 35-104(part).

7-15-4413. Boundaries of municipal housing authority. (1) The boundaries of such authority shall include said city and the area within 10 miles from the territorial boundaries of said city, but in no event shall it include the whole or a part of any other city unless a resolution shall have been adopted by the governing body of such other city declaring that there is a need for such authority to exercise its powers within that city.

(2) After the creation of an authority, the subsequent existence within its territorial boundaries of more than one city shall in no way affect the territorial boundaries of such authority.

History: En. Sec. 4, Ch. 140, L. 1935; re-en. Sec. 5309.4, R.C.M. 1935; amd. Sec. 1, Ch. 68, L. 1953; amd. Sec. 3, Ch. 193, L. 1957; R.C.M. 1947, 35-104(part).

7-15-4414. Problems arising from existence of several overlapping authorities. (1) In case an area lies within 10 miles of the boundaries of more than one city, such area shall be deemed to be within the boundaries of the authority embracing such area which was first established, all priorities to be determined on the basis of the time of the issuance of the aforesaid certificates by the secretary of state.

(2) No housing authority shall operate in any area in which an authority already established is operating without the consent by resolution of the authority already operating therein.

History: En. Sec. 4, Ch. 140, L. 1935; re-en. Sec. 5309.4, R.C.M. 1935; amd. Sec. 1, Ch. 68, L. 1953; amd. Sec. 3, Ch. 193, L. 1957; R.C.M. 1947, 35-104(part).

7-15-4415. Cooperation between housing authorities. Any two or more housing authorities may join or cooperate with one another in the exercise of any or all of the powers conferred on such housing authorities for the purpose of financing, planning, undertaking, constructing, or operating a housing project or projects located within the area of operation of any one or more of such housing authorities.

History: En. Sec. 10, Ch. 140, L. 1935; re-en. Sec. 5309.10, R.C.M. 1935; amd. Sec. 2, Ch. 153, L. 1941; R.C.M. 1947, 35-110.

7-15-4416. Cooperation among governmental units and housing authorities. (1) An authority shall have power to arrange with the state, its subdivisions and agencies, and any county, city, or municipality of the state, to the extent that it is within the scope of each of their respective functions:

(a) to cause the services customarily provided by each of them to be rendered for the benefit of such housing authority and/or the occupants of any housing project;

(b) to provide and maintain parks and sewage, water, and other facilities adjacent to or in connection with housing projects; and

(c) to change the city or municipality map or to plan, replan, zone, or rezone any part of the city or municipality.

(2) (a) For the purpose of aiding and cooperating in the planning, construction, and operation of housing projects located within their respective

territorial boundaries, the state, its subdivisions and agencies, and any county, city, or municipality of the state may, upon such terms, with or without consideration, as it may determine:

(i) grant, sell, convey, or lease any of its property to a housing authority or the United States of America or any agency thereof; and

(ii) to the extent that it is within the scope of each of their respective functions:

(A) cause the services customarily provided by each of them to be rendered for the benefit of the housing authority and/or the occupants of such housing projects;

(B) provide and maintain parks and sewage, water, and other facilities adjacent to or in connection with housing projects; and

(C) enter into any agreement to open, close, pave, install, or change the grade of streets, roads, roadways, alleys, sidewalks, or other such facilities; to change the city or municipality map; or to plan, replan, zone, or rezone any part of the city or municipality.

(b) Any law or statute to the contrary notwithstanding, any gift, grant, sale, conveyance, lease, or agreement provided for in this subsection may be made by the state, its subdivisions and agencies, and any county, city, or municipality of the state without appraisal, public notice, advertisement, or public bidding.

(c) In connection with the exercise of the power granted by subsection (2), any city or municipality may incur the entire expense of any such public improvement located within its territorial boundaries without assessment against abutting property owners.

(d) As used in subsection (2):

(i) "municipality" shall mean any city, town, or incorporated village of the state;

(ii) "housing project" shall mean any undertaking to demolish, clear, remove, alter, or repair unsafe or unsanitary housing and/or to provide dwelling accommodations for persons of low income, and said term may also include such buildings and equipment for recreational or social assemblies for educational, health, or welfare purposes and such necessary utilities as are designed primarily for the benefit and use of the housing authority and/or the occupants of such dwelling accommodations.

History: (1)En. Sec. 9, Ch. 140, L. 1935; re-en. Sec. 5309.9, R.C.M. 1935; amd. Sec. 2, Ch. 68, L. 1953; amd. Sec. 4, Ch. 193, L. 1957; amd. Sec. 1, Ch. 259, L. 1974; Sec. 35-109, R.C.M. 1947; (2)(a) thru (2)(c)En. Sec. 3, Ch. 138, L. 1935; re-en. Sec. 5309.30, R.C.M. 1935; Sec. 35-137, R.C.M. 1947; (2)(d)En. Sec. 2, Ch. 138, L. 1935; re-en. Sec. 5309.29, R.C.M. 1935; Sec. 35-136, R.C.M. 1947; R.C.M. 1947, 35-109(part), 35-136(3), (4), 35-137.

7-15-4417. Initial funding of housing authority. Immediately after the incorporation of a housing authority, the council or other governing body of a first- or second-class city included within the territorial boundaries of the authority:

(1) shall make an estimate of the amount of money necessary for the administrative expenses and overhead of the housing authority during the first year following the incorporation of the housing authority;

(2) shall appropriate such amount to the authority out of any money in the city treasury not appropriated to some other purpose; and

(3) shall cause the money so appropriated to be paid the authority as a donation.

History: Ap. p. Sec. 4, Ch. 138, L. 1935; re-en. Sec. 5309.31, R.C.M. 1935; Sec. 35-138, R.C.M. 1947; Ap. p. Sec. 2, Ch. 138, L. 1935; re-en. Sec. 5309.29, R.C.M. 1935; Sec. 36-136, R.C.M. 1947; R.C.M. 1947, 35-136(2), 35-138(part); amd. Sec. 21, Ch. 253, L. 1979.

7-15-4418. Interim funding of housing authority. In addition to the power granted in 7-15-4417, any municipality located in whole or in part within the boundaries of a housing authority may, annually and from time to time, make donations or advances to the authority of such sums as the municipality in its discretion may determine.

History: En. Sec. 4, Ch. 138, L. 1935; re-en. Sec. 5309.31, R.C.M. 1935; R.C.M. 1947, 35-138(part); amd. Sec. 22, Ch. 253, L. 1979.

7-15-4419. Authority to reimburse municipality for loans. The authority, when it has money available therefor, shall reimburse a municipality for all advances made to it by way of loan.

History: En. Sec. 4, Ch. 138, L. 1935; re-en. Sec. 5309.31, R.C.M. 1935; R.C.M. 1947, 35-138(part); amd. Sec. 23, Ch. 253, L. 1979.

7-15-4420. Procedure to implement certain sections. (1) Except as otherwise provided in 7-15-4416(2) and 7-15-4417 through 7-15-4419, all action authorized to be taken under 7-15-4416(2) and 7-15-4417 through 7-15-4419 by the council or other governing body of any city or of any municipality may be by resolution adopted by a majority of all the members of its council or other governing body.

(2) The resolution may be adopted at the meeting of the council or other governing body at which such resolution is introduced and shall take effect immediately upon such adoption, and no such resolution need be published or posted.

History: En. Sec. 5, Ch. 138, L. 1935; re-en. Sec. 5309.32, R.C.M. 1935; R.C.M. 1947, 35-139.

7-15-4421. Municipal housing authority to be nonprofit. It is hereby declared to be the policy of this state that:

(1) each housing authority shall manage and operate its housing projects in an efficient manner so as to enable it to fix the rentals for dwelling accommodations at the lowest possible rates consistent with its providing decent, safe, and sanitary dwelling accommodations; and

(2) no housing authority shall construct or operate any such project for profit or as a source of revenue to the city.

History: En. Sec. 5, Ch. 153, L. 1941; re-en. Sec. 5309.27F, R.C.M. 1935; R.C.M. 1947, 35-133(part).

7-15-4422. Authorization to dissolve housing authority. If, after the lapse of 2 years from the creation of a housing authority by the filing and recording in the office of the secretary of state of the application as provided in 7-15-4410, no housing project has been commenced and no contract has been signed by the council or the mayor on behalf of the municipality with the housing authority or United States housing authority providing for contributions by the municipality either in cash or by tax remissions or exemptions in aid or support of any such housing project, such housing authority may be dissolved as provided in 7-15-4423.

History: **En. Sec. 1, Ch. 25, L. 1941; re-en. Sec. 5309.37, R.C.M. 1935; R.C.M. 1947, 35-146(part).**

7-15-4423. Resolution to dissolve housing authority. (1) When a housing authority is subject to dissolution as provided in 7-15-4422, the council may, at any regular meeting of the council, without any previous notice, and in its discretion, adopt a resolution declaring that:

(a) dwelling accommodations in the city and surrounding area are such that there is no need for the construction of any housing project;

(b) the need for the creation of a housing authority no longer exists; and

(c) the same be disbanded and dissolved.

(2) The resolution shall be spread upon the minutes of the meeting of the council. Thereupon, a copy of the said resolution shall be duly certified by the mayor and city clerk and filed for record in the office of the secretary of state, whereupon the housing authority shall be dissolved and all functions thereof cease and the commissioners thereof discharged from any further duties or powers.

History: **En. Sec. 1, Ch. 25, L. 1941; re-en. Sec. 5309.37, R.C.M. 1935; R.C.M. 1947, 35-146(part).**

7-15-4424 through 7-15-4430 reserved.

7-15-4431. Appointment of commissioners. (1) An authority consists of seven commissioners appointed by the mayor, and he shall designate the first chairman. A commissioner may not be a city official.

(2) Two of the commissioners must be tenants of the housing authority. One tenant commissioner shall represent family tenants and one tenant commissioner shall represent elderly and handicapped tenants. Nominees for tenant commissioner shall submit to the city clerk a petition signed by not less than 25 adult tenants of the authority or 25% of the adult tenants of the authority, whichever is greater. The city clerk shall submit a list of the tenant nominees to the mayor for appointment to the housing authority. The staff of the housing authority may not involve itself in the nomination or appointment of tenant commissioners.

(3) The mayor shall file with the city clerk a certificate of the appointment or reappointment of any commissioner, and the certificate is conclusive evidence of the due and proper appointment of the commissioner.

History: **En. Sec. 5, Ch. 140, L. 1935; re-en. Sec. 5309.5, R.C.M. 1935; R.C.M. 1947, 35-105(part); amd. Sec. 2, Ch. 514, L. 1989.**

7-15-4432. Term of office. (1) The commissioners who are first appointed must be designated by the mayor to serve for terms of 1, 2, 3, 4, and 5 years, respectively, from the date of their appointment. Thereafter the term of office is 5 years.

(2) The tenant commissioners who are first appointed shall serve for terms of 1 and 2 years, respectively, from the date of their appointment. Thereafter the term of office is 2 years.

(3) A commissioner shall hold office until his successor has been appointed and qualified.

History: **En. Sec. 5, Ch. 140, L. 1935; re-en. Sec. 5309.5, R.C.M. 1935; R.C.M. 1947, 35-105(part); amd. Sec. 3, Ch. 514, L. 1989.**

7-15-4433. Compensation of commissioners. A commissioner shall receive no compensation for his services, but he shall be entitled to the necessary expenses, including traveling expenses, incurred in the discharge of his duties.

History: En. Sec. 5, Ch. 140, L. 1935; re-en. Sec. 5309.5, R.C.M. 1935; R.C.M. 1947, 35-105(part).

7-15-4434. Vacancies. Vacancies shall be filled for the unexpired term.

History: En. Sec. 5, Ch. 140, L. 1935; re-en. Sec. 5309.5, R.C.M. 1935; R.C.M. 1947, 35-105(part).

7-15-4435. Control of conflict of interest. (1) Except as provided in 7-15-4431, a commissioner or employee of an authority may not acquire any interest, direct or indirect, in any housing project or in any property included or planned to be included in any project. A commissioner may not have any interest, direct or indirect, in any contract or proposed contract for materials or services to be furnished or used in connection with any housing project.

(2) (a) If a commissioner or employee of an authority owns or controls an interest, direct or indirect, in any property included or planned to be included in any housing project, he shall immediately disclose the interest in writing to the authority, and the disclosure must be entered upon the minutes of the authority.

(b) Failure to disclose an interest constitutes misconduct in office.

History: En. Sec. 7, Ch. 140, L. 1935; re-en. Sec. 5309.7, R.C.M. 1935; R.C.M. 1947, 35-107; amd. Sec. 4, Ch. 514, L. 1989.

7-15-4436. Removal of commissioners. The mayor may remove a commissioner for inefficiency or neglect of duty or misconduct in office, but only after the commissioner shall have been given a copy of the charges against him (which may be made by the mayor) at least 10 days prior to the hearing thereon and had an opportunity to be heard in person or by counsel.

History: En. Sec. 8, Ch. 140, L. 1935; re-en. Sec. 5309.8, R.C.M. 1935; R.C.M. 1947, 35-108(part).

7-15-4437. Right of obligee of authority to request removal of commissioner. (1) Any obligee of the authority may file with the mayor written charges that the authority is willfully violating any law of the state or any term, provision, or covenant in any contract to which the authority is a party. The mayor shall give each of the commissioners a copy of such charges at least 10 days prior to the hearing thereon and an opportunity to be heard in person or by counsel and shall within 15 days after receipt of such charges remove any commissioner of the authority who shall have been found to have acquiesced in any such willful violation.

(2) A commissioner shall be deemed to have acquiesced in a willful violation by the authority of a law of this state or of any term, provision, or covenant contained in a contract to which the authority is a party if, before a hearing is held on the charges against him, he shall not have filed a written statement with the authority of his objections to or lack of participation in such violation.

History: En. Sec. 8, Ch. 140, L. 1935; re-en. Sec. 5309.8, R.C.M. 1935; R.C.M. 1947, 35-108(part).

7-15-4438. Record of removal proceedings. In the event of the removal of any commissioner, the mayor shall file in the office of the city clerk a record of the proceedings, together with the charges made against the commissioners and the findings thereon.

History: En. Sec. 8, Ch. 140, L. 1935; re-en. Sec. 5309.8, R.C.M. 1935; R.C.M. 1947, 35-108(part).

7-15-4439. Conduct of business. (1) A simple majority of commissioners constitutes a quorum.

(2) When the office of the first chairman of the authority becomes vacant, the authority shall select a chairman from among its members. An authority shall select from among its members a vice-chairman.

(3) An authority may:

(a) employ a secretary (who shall be executive director), technical experts, and such other officers, agents, and employees, permanent and temporary, as it may require and shall determine their qualifications, duties, and compensation;

(b) call upon the corporation counsel or chief law officer of the city for legal services as it may require or employ its own counsel and legal staff;

(c) delegate to one or more of its agents or employees powers or duties as it may consider proper.

History: En. Sec. 5, Ch. 140, L. 1935; re-en. Sec. 5309.5, R.C.M. 1935; R.C.M. 1947, 35-105(part); amd. Sec. 5, Ch. 514, L. 1989.

7-15-4440. Certain laws controlling. (1) Insofar as the provisions of Chapter 140, Laws 1935, are inconsistent with the provisions of any other law, the provisions of Chapter 140, Laws 1935, shall be controlling.

(2) Insofar as the provisions of Chapter 193, Laws 1957, are inconsistent with the provisions of any other law, the provisions of Chapter 193, Laws 1957, shall be controlling.

History: (1)En. Sec. 28, Ch. 140, L. 1935; re-en. Sec. 5309.27, R.C.M. 1935; Sec. 35-127, R.C.M. 1947; (2)En. Sec. 9, Ch. 193, L. 1957; Sec. 35-125.2, R.C.M. 1947; R.C.M. 1947, 35-125.2, 35-127.

7-15-4441 through 7-15-4450 reserved.

7-15-4451. General powers of housing authority. (1) An authority shall exercise public powers and have all the powers necessary or convenient to carry out and effectuate the purposes and provisions of this part and part 45, including the following powers in addition to others herein granted.

(2) An authority shall have power to:

(a) sue and be sued;

(b) have a seal and alter the same at pleasure;

(c) have perpetual succession;

(d) make and execute contracts and other instruments necessary or convenient to the exercise of the powers of the authority;

(e) make and from time to time amend and repeal bylaws and rules, not inconsistent with this part and part 45, to carry into effect the powers and purposes of the authority.

(3) In addition to all of the other powers herein conferred upon it, an authority may do all things necessary and convenient to carry out the powers expressly given in this part and part 45.

History: En. Sec. 9, Ch. 140, L. 1935; re-en. Sec. 5309.9, R.C.M. 1935; amd. Sec. 2, Ch. 68, L. 1953; amd. Sec. 4, Ch. 193, L. 1957; amd. Sec. 1, Ch. 259, L. 1974; R.C.M. 1947, 35-109(part).

7-15-4452. Exercise of powers. (1) An authority may exercise any or all of the powers herein conferred upon it, either generally or with respect to any specific housing project or projects, through or by an agent or agents which it may designate, including any corporation or corporations which are or shall be formed under the laws of this state, and for such purposes an authority may cause one or more corporations to be formed under the laws of this state or may acquire the capital stock of any corporation or corporations.

(2) Any corporate agent, all of the stock of which shall be owned by the authority or its nominee or nominees, may to the extent permitted by law exercise any of the powers conferred upon the authority herein.

History: En. Sec. 9, Ch. 140, L. 1935; re-en. Sec. 5309.9, R.C.M. 1935; amd. Sec. 2, Ch. 68, L. 1953; amd. Sec. 4, Ch. 193, L. 1957; amd. Sec. 1, Ch. 259, L. 1974; R.C.M. 1947, 35-109(part).

7-15-4453. Strict compliance with laws and contracts required. The authority and its commissioners shall be under a statutory duty to comply or to cause compliance strictly with all provisions of this part and part 45 and the laws of the state and, in addition thereto, with each and every term, provision, and covenant in any contract of the authority to be kept or performed on its part.

History: En. Sec. 6, Ch. 140, L. 1935; re-en. Sec. 5309.6, R.C.M. 1935; R.C.M. 1947, 35-106.

7-15-4454. General powers related to housing programs. An authority shall have power to:

(1) determine where unsafe or unsanitary dwelling or housing conditions exist;

(2) study and make recommendations concerning the plan of any city or municipality located within its boundaries in relation to the problem of clearing, replanning, and reconstruction of areas in which unsafe or unsanitary dwelling or housing conditions exist and the providing of dwelling accommodations for persons of low income and to cooperate with any city, municipal, or regional planning agency;

(3) prepare, carry out, and operate housing projects;

(4) provide for the construction, reconstruction, improvement, alteration, or repair of any housing project or any part thereof;

(5) take over by purchase, lease, or otherwise any housing project located within its boundaries undertaken by any government;

(6) act as agent for the federal government in connection with the acquisition, construction, operation, and/or management of a housing project or any part thereof;

(7) arrange with any city or municipality located in whole or in part within its boundaries or with a government for the furnishing, planning, replanning, installing, opening, or closing of streets, options, or property rights or for the furnishing of property or services in connection with a project;

(8) lease or rent any of the dwelling or other accommodations or any of the lands, buildings, structures, or facilities embraced in any housing project and to establish and revise the rents or charges therefor.

History: En. Sec. 9, Ch. 140, L. 1935; re-en. Sec. 5309.9, R.C.M. 1935; amd. Sec. 2, Ch. 68, L. 1953; amd. Sec. 4, Ch. 193, L. 1957; amd. Sec. 1, Ch. 259, L. 1974; R.C.M. 1947, 35-109(part).

7-15-4455. Housing projects subject to planning, zoning, and building laws. All housing projects of an authority shall be subject to the planning, zoning, sanitary, and building laws, ordinances, and regulations applicable to the locality in which the housing project is situated.

History: En. Sec. 13, Ch. 140, L. 1935; re-en. Sec. 5309.13, R.C.M. 1935; R.C.M. 1947, 35-113.

7-15-4456. Low-rent housing for the elderly. (1) For the purpose of increasing the supply of low-rent housing for elderly families, an authority may develop, construct, and operate new housing or acquire, remodel, and operate existing housing in order to provide accommodations designed specifically for such elderly families.

(2) Notwithstanding the provisions of this or any other law, an authority, in respect to dwelling units suitable to the needs of elderly families, may extend a prior preference in occupancy to such elderly families.

History: En. 35-103.1 by Sec. 2, Ch. 193, L. 1957; R.C.M. 1947, 35-103.1(part).

7-15-4457. Federal financial assistance for low-rent housing for the elderly. (1) Any application of the authority for federal financial assistance for such housing for elderly families shall first be approved by the council by resolution duly adopted.

(2) An authority may agree to conditions as to tenant eligibility or preference required by the federal government pursuant to federal law in any contract for financial assistance with the authority.

History: En. 35-103.1 by Sec. 2, Ch. 193, L. 1957; R.C.M. 1947, 35-103.1(part).

7-15-4458. Investigatory powers of housing authority. (1) An authority shall have power to:

(a) investigate into living, dwelling, and housing conditions and into the means and methods of improving such conditions;

(b) enter upon any building or property in order to conduct investigations or to make surveys or soundings;

(c) conduct examinations and investigations and hear testimony and take proof under oath at public or private hearings on any matter material for its information;

(d) issue subpoenas requiring the attendance of witnesses or the production of books and papers and issue commissions for the examination of witnesses who are out of the state or unable to attend before the authority or excused from attendance.

(2) Any of the investigations or examinations provided for in this part and part 45 may be conducted by the authority, by a committee appointed by it and consisting of one or more commissioners, by counsel, or by an officer or employee specially authorized by the authority to conduct it. Any commissioner, counsel for the authority, or any person designated by it to conduct an investigation or examination shall have power to administer oaths, take affidavits, and issue subpoenas or commissions.

History: En. Sec. 9, Ch. 140, L. 1935; re-en. Sec. 5309.9, R.C.M. 1935; amd. Sec. 2, Ch. 68, L. 1953; amd. Sec. 4, Ch. 193, L. 1957; amd. Sec. 1, Ch. 259, L. 1974; R.C.M. 1947, 35-109(part).

7-15-4459. Availability of housing authority findings and determinations. An authority shall have power to make available to such agencies, boards, or commissions as are charged with the duty of abating or requiring the correction of nuisances or like conditions or of demolishing unsafe or unsanitary structures within its territorial limits, its findings and recommendations with regard to any building or property where conditions exist which are dangerous to the public health, morals, safety, or welfare.

History: En. Sec. 9, Ch. 140, L. 1935; re-en. Sec. 5309.9, R.C.M. 1935; amd. Sec. 2, Ch. 68, L. 1953; amd. Sec. 4, Ch. 193, L. 1957; amd. Sec. 1, Ch. 259, L. 1974; R.C.M. 1947, 35-109(part).

7-15-4460. Powers of housing authority relating to acquisition and disposition of property. (1) An authority shall have power to:

(a) purchase, lease, obtain options upon, acquire by gift, grant, bequest, devise, or otherwise any real or personal property or any interest therein from any person, firm, corporation, city, municipality, or government;

(b) acquire by eminent domain any real property, including improvements and fixtures thereon;

(c) sell, exchange, transfer, assign, or pledge any real or personal property or any interest therein to any person, firm, corporation, municipality, city, or government;

(d) own, hold, clear, and improve property;

(e) insure or provide for the insurance of the property or operations of the authority against such risks as the authority may deem advisable;

(f) procure insurance or guarantees from the federal government of the payment of any debts or parts thereof secured by mortgages made or held by the authority on any property included in any housing project.

(2) No provisions with respect to the acquisition, operation, or disposition of property by other public bodies shall be applicable to an authority unless the legislature shall specifically so state.

History: En. Sec. 9, Ch. 140, L. 1935; re-en. Sec. 5309.9, R.C.M. 1935; amd. Sec. 2, Ch. 68, L. 1953; amd. Sec. 4, Ch. 193, L. 1957; amd. Sec. 1, Ch. 259, L. 1974; R.C.M. 1947, 35-109(part).

7-15-4461. Acquisition of property by authority for government housing project. The authority may acquire, by purchase or by the exercise of its power of eminent domain as provided in 7-15-4462, any real or personal property for any housing project being constructed or operated by a government. The authority, upon such terms and conditions, with or without consideration, as it shall determine, may convey title or deliver possession of such property so acquired or purchased to such government for use in connection with such housing project.

History: En. Sec. 12, Ch. 140, L. 1935; re-en. Sec. 5309.12, R.C.M. 1935; R.C.M. 1947, 35-112.

7-15-4462. Exercise of power of eminent domain. (1) After the adoption by it of a resolution declaring that the acquisition of the property described therein is in the public interest and necessary for public use, the authority shall have the right to acquire by eminent domain any real property, including fixtures and improvements, which it may deem necessary to carry out the purposes of this part and part 45.

(2) The authority may exercise the power of eminent domain pursuant to the provisions of either:

(a) Title 70, chapter 30; or

(b) Any other applicable statutory provisions for the exercise of the power of eminent domain.

(3) Property already devoted to a public use may be acquired, provided that no property belonging to any city or municipality within the boundaries of the authority or to any government may be acquired without its consent and that no property belonging to a public utility corporation may be acquired without the approval of the commission or other officer or tribunal, if there be any, having regulatory power over such corporation.

History: **En. Sec. 11, Ch. 140, L. 1935; re-en. Sec. 5309.11, R.C.M. 1935; R.C.M. 1947, 35-111.**

7-15-4463. Title to property acquired from housing authority subject to agreements with governments. Notwithstanding anything in this part or part 45 to the contrary, any purchaser or purchasers at a sale of real or personal property of the authority, whether pursuant to any foreclosure of a mortgage or pursuant to judicial process or otherwise, shall obtain title subject to any contract between the authority and a government relating to the supervision by a government of the operation and maintenance of such property and the construction of improvements thereon.

History: **En. Sec. 22, Ch. 140, L. 1935; re-en. Sec. 5309.22, R.C.M. 1935; R.C.M. 1947, 35-122.**

7-15-4464. Authorization for payment of rentals in lieu of taxes. (1) Any housing authority established pursuant to this part and/or the federal government may pay annual sums from rentals in lieu of taxes to any state and/or political subdivision thereof with respect to any real property, including improvements thereon, owned or held by either such housing authority or the federal government.

(2) The amount so paid for any year upon such property shall not exceed the taxes which would be paid to the state and/or subdivision thereof, as the case may be, upon such property if it were not exempt from taxation, with such allowances as may be considered to be appropriate for expenditures by the government for streets, utilities, or other public services to serve such property.

History: **En. Sec. 4, Ch. 215, L. 1943; R.C.M. 1947, 35-304.**

7-15-4465. Payments by housing authorities to local and state bodies. Notwithstanding any limitations in this or any other law, any housing authority may agree to make such payments to the county, city, or municipality, the state or any political subdivision or agency thereof (which payments such bodies are hereby authorized to accept) as the authority finds consistent with the maintenance of the low-rent character of housing projects or the achievement of the purposes of this housing authorities law.

History: **En. Sec. 35-125.1 by Sec. 7, Ch. 193, L. 1957; R.C.M. 1947, 35-125.1.**

7-15-4466. Special powers and contract provisions when federal government involved. (1) In addition to the powers conferred upon the authority by other provisions of this part or part 45, the authority is empowered to:

(a) borrow money and/or accept grants from the federal government for or in aid of the construction of any housing project which such authority is authorized by this part or part 45 to undertake;

(b) take over any land acquired by the federal government for the construction of a housing project;

(c) take over or lease or manage any housing project constructed or owned by the federal government; and

(d) these ends, enter into such contracts, mortgages, trust indentures, leases, or other agreements as the federal government may require, including agreements that the federal government shall have the right to supervise and approve the construction, maintenance, and operation of such housing project.

(2) (a) In any contract with the federal government for annual contributions to an authority, the authority may obligate itself to convey to the federal government possession of or title to the project to which such contract relates upon the occurrence of a substantial default (as defined in such contract) with respect to the covenants or conditions to which the authority is subject. This obligation shall be specifically enforceable and shall not constitute a mortgage, notwithstanding any other laws.

(b) Such contract may further provide that in case of such conveyance, the federal government may complete, operate, manage, lease, convey, or otherwise deal with the project in accordance with the terms of such contract, provided that the contract requires that, as soon as practicable after the federal government is satisfied that all defaults with respect to the project have been cured and that the project will thereafter be operated in accordance with the terms of the contract, the federal government shall reconvey to the authority the project as then constituted.

(3) A housing authority shall have the power (notwithstanding anything to the contrary contained in this part or part 45 or in any other provision of law) to agree to any conditions attached to federal financial assistance relating to the determination of prevailing salaries or wages or payment of not less than prevailing salaries or wages or compliance with labor standards in the development or administration of projects and to include in any contract let in connection with a project stipulations requiring that the contractor and any subcontractor comply with requirements as to minimum salaries or wages and maximum hours of labor and comply with any conditions which the federal government may have attached to the financial aid of the project.

History: (1), (2)En. Sec. 23, Ch. 140, L. 1935; re-en. Sec. 5309.23, R.C.M. 1935; amd. Sec. 5, Ch. 193, L. 1957; Sec. 35-123, R.C.M. 1947; (3)En. Sec. 25, Ch. 140, L. 1935; re-en. Sec. 5309.25, R.C.M. 1935; amd. Sec. 4, Ch. 153, L. 1941; amd. Sec. 6, Ch. 193, L. 1957; Sec. 35-125, R.C.M. 1947; R.C.M. 1947, 35-123(part), 35-125.

7-15-4467. Reports by authority to municipality. The authority shall, at least once a year, file with the mayor of the city a report of its activities for the preceding year and shall make any recommendations with reference to any additional legislation or other action that may be necessary in order to carry out the purposes of this part and part 45.

History: En. Sec. 26, Ch. 140, L. 1935; re-en. Sec. 5309.26, R.C.M. 1935; R.C.M. 1947, 35-126.

Part 45

Municipal Housing Authorities Continued

Part Cross-References

Housing Act of 1975, Title 90, ch. 6, part 1.

7-15-4501. Authorization to issue bonds. The authority shall have power and is hereby authorized to issue, from time to time in its discretion, for any of its corporate purposes:

(1) bonds on which the principal and interest are payable:

(a) exclusively from the income and revenues of the housing project financed with the proceeds of such bonds or with such proceeds together with the proceeds of a grant from the federal government to aid in financing the construction thereof; or

(b) exclusively from the income and revenues of certain designated housing projects, whether or not they were financed in whole or in part with the proceeds of such bonds; provided, however, that the credit of the authority shall not be pledged to the payment of such bonds, but such bonds shall be payable only (and the bonds shall so state on their face) from the revenues of the designated housing project or projects and the funds received from the sale or disposal thereof and, if the authority so determines, shall be additionally secured by a trust indenture pledging such revenues or, in certain instances as hereinafter provided, by a mortgage of the property comprising such designated housing project or projects and the revenue therefrom;

(2) bonds for the payment of the principal and interest of which the credit of the authority is pledged and which may be additionally secured by a pledge of the revenues of the authority or any part thereof pursuant to a resolution or trust indenture of the authority or, in certain instances as hereinafter provided, may be additionally secured by a mortgage of the property and revenues of the authority or any part thereof.

History: En. Sec. 14, Ch. 140, L. 1935; re-en. Sec. 5309.14, R.C.M. 1935; R.C.M. 1947, 35-114(part).

7-15-4502. Powers related to loans. An authority shall have power:

(1) to borrow money upon its bonds, notes, debentures, or other evidences of indebtedness and to secure the same by pledges of its revenues and (subject to the limitations hereinafter imposed) by mortgages upon property held or to be held by it or in any other manner;

(2) in connection with any loan, to agree to limitations upon its right to dispose of any housing project or part thereof or to undertake additional housing projects;

(3) in connection with any loan by a government, to agree to limitations upon the exercise of any powers conferred upon the authority by this part and part 44;

(4) to invest any funds held in reserves or sinking funds or any funds not required for immediate disbursement in property or securities in which savings banks may legally invest funds subject to their control.

History: En. Sec. 9, Ch. 140, L. 1935; re-en. Sec. 5309.9, R.C.M. 1935; amd. Sec. 2, Ch. 68, L. 1953; amd. Sec. 4, Ch. 193, L. 1957; amd. Sec. 1, Ch. 259, L. 1974; R.C.M. 1947, 35-109(part).

7-15-4503. Nature of bonded indebtedness. (1) Neither the commissioners of the authority nor any person executing the bonds shall be liable personally on the bonds by reason of the issuance thereof.

(2) The bonds and other obligations of the authority (and such bonds and obligations shall so state on their face) shall not be a debt of any city or municipality located within its boundaries or of the state, and neither the state nor any such city or municipality shall be liable thereon, nor in any event shall they be payable out of any funds or properties other than those of the authority.

(3) The bonds shall not constitute an indebtedness within the meaning of any constitutional or statutory provision of the laws of the state. Bonds may be issued under this part and part 44 notwithstanding any debt or other limitation prescribed by any statute.

History: En. Sec. 14, Ch. 140, L. 1935; re-en. Sec. 5309.14, R.C.M. 1935; R.C.M. 1947, 35-114(part).

7-15-4504. Bonds and other obligations to be fully negotiable. Any provision of any law to the contrary notwithstanding, any bonds, interim certificates, or other obligations issued pursuant to this part and part 44 shall be fully negotiable.

History: En. Sec. 15, Ch. 140, L. 1935; re-en. Sec. 5309.15, R.C.M. 1935; amd. Sec. 37, Ch. 234, L. 1971; R.C.M. 1947, 35-115(part).

7-15-4505. Housing authority bonds as legal investments. (1) The state and all public officers, municipal corporations, political subdivisions, and public bodies; all banks, bankers, trust companies, savings banks and institutions, buildings and loan associations, savings and loan associations, investment companies, and other persons carrying on a banking business; all insurance companies, insurance associations, and other persons carrying on an insurance business; and all executors, administrators, guardians, trustees, and other fiduciaries may legally invest any sinking funds, money, or other funds belonging to them or within their control in any bonds or other obligations issued by a housing authority established pursuant to the housing authorities law of this state or issued by any public housing authority or agency in the United States when such bonds or other obligations are secured by a pledge of annual contributions to be paid by the United States government or any agency thereof.

(2) It is the purpose of this section to authorize any persons, firms, corporations, associations, political subdivisions, bodies, and officers, public or private, to use any funds owned or controlled by them, including but not limited to sinking, insurance, investment, retirement, compensation, pension, and trust funds and funds held on deposit, for the purchase of any such bonds or other obligations.

(3) Nothing contained in this section shall be construed as relieving any person, firm, or corporation from any duty of exercising reasonable care in selecting securities.

(4) Insofar as the provisions of this section are inconsistent with the provisions of any other law, the provisions of this section shall be controlling.

History: En. Secs. 1, 3, Ch. 218, L. 1943; R.C.M. 1947, 35-143(part), 35-144.

Cross-References

Security for deposits of public funds, 17-6-103.

7-15-4506. Details relating to bonds. (1) The bonds of the authority shall be authorized by its resolution and shall be issued in one or more series.

(2) The bonds shall bear such date or dates, mature at such time or times (not exceeding 60 years from their respective dates), bear interest at such rate or rates, be in such denominations (which may be made interchangeable), be in such form (either coupon or registered), carry such registration privileges, be executed in such manner, be payable in such medium of payment at such place or places, and be subject to such terms of redemption (with or without premium) as such resolution or its trust indenture or mortgage may provide.

(3) In connection with the issuance of bonds and/or the incurring of any obligation under a lease and in order to secure the payment of such bonds and/or obligations, the authority shall have power to:

(a) covenant as to the bonds to be issued pursuant to any resolution, trust indenture, mortgage, or other instrument; as to the issuance of such bonds in escrow or otherwise; and as to the use and disposition of the proceeds thereof;

(b) covenant as to what other or additional debt may be incurred by it;

(c) provide for the terms, form, registration, exchange, execution, and authentication of bonds;

(d) provide for the replacement of lost, destroyed, or mutilated bonds;

(e) covenant against extending the time for the payment of its bonds or interest thereon, directly or indirectly, by any means or in any manner.

History: (1), (2)En. Sec. 15, Ch. 140, L. 1935; re-en. Sec. 5309.15, R.C.M. 1935; amd. Sec. 37, Ch. 234, L. 1971; Sec. 35-115, R.C.M. 1947; (3)En. Sec. 16, Ch. 140, L. 1935; re-en. Sec. 5309.16, R.C.M. 1935; Sec. 35-116, R.C.M. 1947; R.C.M. 1947, 35-115(part), 35-116(part).

7-15-4507. Sale of bonds. (1) The bonds may be sold at public sale held after notice published once at least 10 days prior to such sale in a newspaper having a general circulation in the city and in a financial newspaper published in the city of .... or in the city of .....

(2) Such bonds may be sold to the federal government at private sale without any public advertisement.

(3) The bonds may be sold at such price or prices as the authority shall determine.

History: En. Sec. 15, Ch. 140, L. 1935; re-en. Sec. 5309.15, R.C.M. 1935; amd. Sec. 37, Ch. 234, L. 1971; R.C.M. 1947, 35-115(part).

7-15-4508. Purchase of bonds by housing authority. (1) The authority shall have power out of any funds available therefor to purchase any bonds issued by it at a price not more than the principal amount thereof and the accrued interest; provided, however, that bonds payable exclusively from the revenues of a designated project or projects shall be purchased out of any such revenues available therefor. All bonds so purchased shall be canceled.

(2) This section shall not apply to the redemption of bonds.

History: En. Sec. 15, Ch. 140, L. 1935; re-en. Sec. 5309.15, R.C.M. 1935; amd. Sec. 37, Ch. 234, L. 1971; R.C.M. 1947, 35-115(part).

7-15-4509. Interim certificates. Pending the authorization, preparation, execution, or delivery of definitive bonds, the authority may issue interim certificates or other temporary obligations to the purchaser of such bonds. Such interim certificates or other temporary obligations shall be in such form; contain such terms, conditions, and provisions; bear such date or dates; and evidence such agreements relating to their discharge or payment or the delivery of definitive bonds as the authority may by resolution, trust indenture, or mortgage determine.

History: En. Sec. 15, Ch. 140, L. 1935; re-en. Sec. 5309.15, R.C.M. 1935; amd. Sec. 37, Ch. 234, L. 1971; R.C.M. 1947, 35-115(part).

7-15-4510. Validity and sufficiency of signatures on bonds. In case any of the officers whose signatures appear on any bonds or coupons shall cease to be such officers before the delivery of such bonds, such signatures shall, nevertheless, be valid and sufficient for all purposes the same as if they had remained in office until such delivery.

History: En. Sec. 15, Ch. 140, L. 1935; re-en. Sec. 5309.15, R.C.M. 1935; amd. Sec. 37, Ch. 234, L. 1971; R.C.M. 1947, 35-115(part).

7-15-4511. Creation of special funds. In connection with the issuance of bonds and/or the incurring of any obligation under a lease and in order to secure the payment of such bonds and/or obligations, the authority shall have power to:

(1) create or authorize the creation of special funds in which there shall be segregated:

(a) the proceeds of any loan and/or grant;

(b) all of the rents, fees, and revenues of any housing project or projects or parts thereof;

(c) any money held for the payment of the costs of operation and maintenance of any such housing projects or as a reserve for the meeting of contingencies in the operation and maintenance thereof;

(d) any money held for the payment of the principal and interest on its bonds or the sums due under its leases and/or as a reserve for such payments; and

(e) any money held for any other reserves or contingencies; and

(2) covenant as to the use and disposal of the money held in such funds.

History: En. Sec. 16, Ch. 140, L. 1935; re-en. Sec. 5309.16, R.C.M. 1935; R.C.M. 1947, 35-116(part).

7-15-4512. Security for money deposited by housing authority. (1) The authority may by resolution provide that all money deposited by it shall be secured by:

(a) obligations of the United States or of the state of a market value equal at all times to the amount of such deposits;

(b) any securities in which savings banks may legally invest funds within their control; or

(c) an undertaking with such sureties as shall be approved by the authority to faithfully keep and pay over upon the order of the authority any such deposits and agreed interest thereon.

(2) All banks and trust companies are authorized to give any such security for such deposits.

History: En. Sec. 24, Ch. 140, L. 1935; re-en. Sec. 5309.24, R.C.M. 1935; R.C.M. 1947, 35-124.

7-15-4513 through 7-15-4520 reserved.

7-15-4521. General powers related to bonds and lease obligations. (1) In connection with the issuance of bonds and/or the incurring of any obligation under a lease and in order to secure the payment of such bonds and/or obligations, the authority shall have power to:

(a) execute all instruments necessary or convenient in the exercise of the powers herein granted or in the performance of its covenants or duties, which may contain such covenants and provisions, in addition to those specified in 7-15-4506, 7-15-4511, and 7-15-4521 through 7-15-4528, as the government or any purchaser of the bonds of the authority may reasonably require;

(b) make such covenants and do any and all such acts and things as may be necessary or convenient or desirable in order to secure its bonds or, in the absolute discretion of the authority, tend to make the bonds more marketable, notwithstanding that such covenants, acts, or things may not be enumerated herein;

(c) make covenants, other than in addition to the covenants expressly authorized in this part or part 44, of like or different character.

(2) It is the intention of subsection (1)(b) hereof to give the authority power to do all things in the issuance of bonds, in the provisions for their security, that are not inconsistent with the constitution of the state, and no consent or approval of any judge or court shall be required thereof; provided, however, that the authority shall have no power to mortgage all or any part of its real or personal property except as provided in 7-15-4526.

History: En. Sec. 16, Ch. 140, L. 1935; re-en. Sec. 5309.16, R.C.M. 1935; R.C.M. 1947, 35-116(part).

7-15-4522. Redemption of bonds. In connection with the issuance of bonds and/or the incurring of any obligation under a lease and in order to secure the payment of such bonds and/or obligations, the authority shall have power to redeem the bonds and covenant for their redemption and provide the terms and conditions thereof.

History: En. Sec. 16, Ch. 140, L. 1935; re-en. Sec. 5309.16, R.C.M. 1935; R.C.M. 1947, 35-116(part).

7-15-4523. Amendment or abrogation of bond contracts. In connection with the issuance of bonds and/or the incurring of any obligation under a lease and in order to secure the payment of such bonds and/or obligations, the authority shall have power to prescribe the procedure, if any, by which the terms of any contract with bondholders may be amended or abrogated, the amount of bonds the holders of which must consent thereto, and the manner in which such consent may be given.

History: En. Sec. 16, Ch. 140, L. 1935; re-en. Sec. 5309.16, R.C.M. 1935; R.C.M. 1947, 35-116(part).

7-15-4524. Bond provisions related to determination and use of rents and fees. In connection with the issuance of bonds and/or the incurring of any obligation under a lease and in order to secure the payment of such bonds and/or obligations, the authority shall have power to:

(1) pledge by resolution, trust indenture, mortgage (subject to the limitations imposed in this part), or other contract all or any part of its rents, fees, or revenues;

(2) covenant against pledging all or any part of its rents, fees, and revenues to which its right then exists or the right to which may thereafter come into existence or against permitting or suffering any lien thereon;

(3) covenant as to the rents and fees to be charged, as to the amount (calculated as may be determined) to be raised each year or other period of time by rents, fees, and other revenues, and as to the use and disposition to be made thereof.

History: En. Sec. 16, Ch. 140, L. 1935; re-en. Sec. 5309.16, R.C.M. 1935; R.C.M. 1947, 35-116(part).

7-15-4525. Bond provisions related to management and use of property. In connection with the issuance of bonds and/or the incurring of any obligation under a lease and in order to secure the payment of such bonds and/or obligations, the authority shall have power to:

(1) covenant against mortgaging all or any part of its real or personal property, then owned or thereafter acquired, or against permitting or suffering any lien thereon;

(2) covenant with respect to limitations on its right to sell, lease, or otherwise dispose of any housing project or any part thereof or with respect to limitations on its right to undertake additional housing projects;

(3) provide for the release of property, rents, fees, and revenues from any pledge or mortgage and reserve rights and powers in or the right to dispose of property which is subject to a pledge or mortgage;

(4) covenant that the authority warrants the title to the premises;

(5) covenant as to the use of any or all of its real or personal property;

(6) covenant as to the maintenance of its property, the replacement thereof, the insurance to be carried thereon, and the use and disposition of insurance money.

History: En. Sec. 16, Ch. 140, L. 1935; re-en. Sec. 5309.16, R.C.M. 1935; R.C.M. 1947, 35-116(part).

7-15-4526. Power to mortgage property when government financing involved. (1) In connection with any project financed in whole or in part by a government, the authority shall also have power to mortgage all or any part of its real or personal property, then owned or thereafter acquired, and thereby:

(a) to vest in a government the right, upon the happening of an event of default (as defined in such mortgage), to foreclose such mortgage through judicial proceedings or through the exercise of a power of sale without judicial proceedings so long as a government shall be the holder of any of the bonds secured by such mortgage;

(b) to vest in a trustee or trustees the right, upon the happening of an event of default (as defined in such mortgage), to foreclose such mortgage through judicial proceedings or through the exercise of a power of sale without judicial proceedings, but only with the consent of the government which aided in financing the housing project involved;

(c) to vest in other obligees the right to foreclose such mortgage by judicial proceedings, but only with the consent of the government which aided in financing the project involved;

(d) to vest in an obligee, including a government, the right in foreclosing any mortgage as aforesaid, to foreclose such mortgage as to all or such part or parts of the property covered thereby as such obligee in its absolute discretion shall elect.

(2) The institution, prosecution, and conclusion of any foreclosure proceedings authorized by subsection (1)(d) and/or the sale of any such parts of the mortgaged property shall not affect in any manner or to any extent the lien of the mortgage on the parts of the mortgaged property not included in such proceedings or not sold as aforesaid.

History: **En. Sec. 17, Ch. 140, L. 1935; re-en. Sec. 5309.17, R.C.M. 1935; R.C.M. 1947, 35-117.**

7-15-4527. Provisions related to breach or default on bonds and bond covenants. In connection with the issuance of bonds and/or the incurring of any obligation under a lease and in order to secure the payment of such bonds and/or obligations, the authority shall have power to:

(1) covenant as to the rights, liabilities, powers, and duties arising upon the breach by it of any covenant, condition, or obligation;

(2) vest in an obligee of the authority the right, in the event of the failure of the authority to observe or perform any covenant to be kept or performed on its part, to cure any such default and to advance any money necessary for such purpose, and the money so advanced may be made an additional obligation of the authority with such interest, security, and priority as may be provided in any trust indenture, mortgage, lease, or contract of the authority with reference thereto;

(3) covenant and prescribe as to the events of default and terms and conditions upon which any or all of its bonds shall become or may be declared due before maturity and as to the terms and conditions upon which such declaration and its consequences may be waived;

(4) covenant to surrender possession of all or any part of any housing project or projects upon the happening of an event of default (as defined in the contract) and to vest in an obligee the right, without judicial proceedings, to take possession and to use, operate, manage, and control such housing projects or any part thereof and to collect and receive all rents, fees, and revenues arising therefrom in the same manner as the authority itself might do and to dispose of the money collected in accordance with the agreement of the authority with such obligee.

History: **En. Sec. 16, Ch. 140, L. 1935; re-en. Sec. 5309.16, R.C.M. 1935; R.C.M. 1947, 35-116(part).**

7-15-4528. Use of bond trustee. In connection with the issuance of bonds and/or the incurring of any obligation under a lease and in order to secure the payment of the bonds and/or obligations, the authority may:

(1) vest in a trustee the right to enforce any covenant made to secure the payment of the bonds and/or obligations;

(2) provide for the powers and duties of the trustee and limit his liabilities; and

(3) provide the terms and conditions upon which the trustee or a designated proportion of the holders of bonds may enforce any covenant.

History: **En. Sec. 16, Ch. 140, L. 1935; re-en. Sec. 5309.16, R.C.M. 1935; R.C.M. 1947, 35-116(part); amd. Sec. 24, Ch. 253, L. 1979.**

7-15-4529. General remedies of an obligee of a housing authority. An obligee of the authority shall have the right, in addition to all other rights which may be conferred on such obligee, subject only to any contractual restrictions binding upon such obligee:

(1) by mandamus, suit, action, or proceeding in law or equity (all of which may be joined in one action), to compel the authority and the commissioners, officers, agents, or employees thereof to perform each and every term, provision, and covenant contained in any contract of the authority and to require the carrying out of any or all covenants and agreements of the authority and the fulfillment of all duties imposed upon the authority by this part or part 44;

(2) by suit, action, or proceeding in equity, to enjoin any acts or things which may be unlawful or the violation of any of the rights of such obligee of the authority;

(3) by suit, action, or proceeding in any court of competent jurisdiction, to cause possession of any housing project or any part thereof to be surrendered to any obligee having the right to such possession pursuant to any contract of the authority.

History: En. Sec. 18, Ch. 140, L. 1935; re-en. Sec. 5309.18, R.C.M. 1935; R.C.M. 1947, 35-118.

7-15-4530. Special remedies of an obligee resulting from mortgage or trust indenture. (1) Any authority shall have power by its trust indenture, mortgage, lease, or other contract to confer upon any obligee holding or representing a specified amount in bonds, leases, or other obligations the right, upon the happening of an event of default as defined in such instrument:

(a) by suit, action, or proceeding in any court of competent jurisdiction, to obtain the appointment of a receiver of any housing project of the authority or any part or parts thereof;

(b) by suit, action, or proceeding in any court of competent jurisdiction, to require the authority and the commissioners thereof to account as if it and they were the trustees of an express trust.

(2) If a receiver is appointed pursuant to subsection (1)(a), he may enter and take possession of such housing project or any part of parts thereof and operate and maintain the same and collect and receive all fees, rents, revenues, or other charges thereafter arising therefrom in the same manner as the authority itself might do and shall keep such money in a separate account or accounts and apply the same in accordance with the obligations of the authority as the court shall direct.

History: En. Sec. 19, Ch. 140, L. 1935; re-en. Sec. 5309.19, R.C.M. 1935; R.C.M. 1947, 35-119.

7-15-4531. Remedies of obligees to be cumulative. All the rights and remedies hereinabove conferred shall be cumulative and in addition to all other rights and remedies that may be conferred upon such obligee of the authority by law or by any contract with the authority.

History: En. Sec. 20, Ch. 140, L. 1935; re-en. Sec. 5309.20, R.C.M. 1935; R.C.M. 1947, 35-120.

7-15-4532. Limitations on remedies of obligees. (1) No interest of the authority in any real or personal property shall be subject to sale by the foreclosure of a mortgage thereon, either through judicial proceedings or the exercise of a power of sale contained in such mortgage, except in the case of the mortgages provided for in 7-15-4526.

(2) All property of the authority shall be exempt from levy and sale by virtue of an execution, and no execution or other judicial process shall issue against the same. No judgment against the authority shall be a charge or lien upon its real or personal property.

(3) The provisions of this section shall not apply to or limit the right of obligees to foreclose any mortgage of the authority provided for in 7-15-4526 and, in case of a foreclosure sale thereunder, to obtain a judgment or decree for any deficiency due on the indebtedness secured thereby and issued on the credit of the authority. Such deficiency judgment or decree shall be a lien and charge upon the property of the authority which may be levied on and sold by virtue of an execution or other judicial process for the purpose of satisfying such deficiency judgment or decree.

History: En. Sec. 21, Ch. 140, L. 1935; re-en. Sec. 5309.21, R.C.M. 1935; R.C.M. 1947, 35-121.

CHAPTER 16

CULTURE, SOCIAL SERVICES, AND RECREATION

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7-16-2404 through 7-16-2410 reserved.
7-16-2411. Creation of county park district.
7-16-2412. Election on creation of district.
7-16-2413. Formation of county park district — appointment of initial commission.
7-16-2414 through 7-16-2420 reserved.
7-16-2421. Election of commissioners.
7-16-2422. Compensation of members of county park district commission.
7-16-2423. Powers of county park district commission.
7-16-2424 through 7-16-2430 reserved.
7-16-2431. District budget — property tax levy.
7-16-2432. Election to change maximum property tax mill levy.
7-16-2433. Park district bonds authorized.
7-16-2434 through 7-16-2440 reserved.
7-16-2441. Alteration of district boundaries.
7-16-2442. Dissolution of county park district.
7-16-2443. Effect of dissolution.

Parts 25 through 40 reserved

Part 41 — General Provisions Affecting Municipal Government

7-16-4101. Municipal authority to establish, alter, and maintain parks.
7-16-4102. Planting and protection of trees.
7-16-4103. Authorization to establish various cultural, social, and recreational facilities.
7-16-4104. Authorization for municipal indebtedness for various cultural, social, and recreational purposes.
7-16-4105. Authorization to levy tax for various cultural, social, and recreational facilities.
7-16-4106. Acquisition of property for athletic fields and civic stadiums.

7-16-4107. Use of park funds for public recreation.
7-16-4108. Operation of public recreation programs.
7-16-4109. Gifts and bequests for public recreation.
7-16-4110. Establishment and maintenance of public baths.
7-16-4111. Financing of public baths.
7-16-4112. Presentation of public band concerts.
7-16-4113. Tax levy for band concerts.
7-16-4114. Authorization to levy tax and establish fund for establishment and maintenance of programs and employee training for day-care facilities.

Part 42 — Municipal Board of Park Commissioners

7-16-4201. Authorization for municipal board of park commissioners.
7-16-4202. Composition of park board.
7-16-4203. Qualifications of park commissioners.
7-16-4204. Term of office.
7-16-4205. Automatic vacation of office.
7-16-4206. Compensation of park commissioners.
7-16-4207. Oath of office.
7-16-4208. Organization of park board.
7-16-4209. Duties of board officers.
7-16-4210. Evidentiary effect of park board minutes.
7-16-4211. Conduct of park board business.
7-16-4212. Control of conflict of interest.
7-16-4213 through 7-16-4220 reserved.
7-16-4221. Powers and duties of park board.
7-16-4222. Rules to implement part.
7-16-4223. Leasing of municipal land for nonpark purposes.
7-16-4224. Power of park board to employ persons and to make contracts.
7-16-4225. Park fund to be maintained.
7-16-4226. Limitation on incurred liability.
7-16-4227. Allowance of claims.
7-16-4228. Disbursement of money.

Part 43 — Municipal Winter Work Program (Repealed October 1, 1996)

7-16-4301. Definitions.
7-16-4302. Authorization to appoint winter work committee.
7-16-4303. Composition of committee.
7-16-4304. Terms of committee members.
7-16-4305. Compensation of committee members.
7-16-4306. Meetings and organization of committee.
7-16-4307. Promotion of winter work program.
7-16-4308. Department of labor and industry to cooperate.
7-16-4309. Filing and use of committee minutes.

Part 1

General Provisions Affecting Local Governments

7-16-101. Creation of funds for recreational and other activities of elderly by local governments. (1) The governing body of a city, county, town, or municipality may in its discretion establish a fund to promote, establish, and maintain recreational, educational, and other activities of the elderly by a levy of up to 1 mill on each dollar of taxable property, which tax levy shall be in addition to all other tax levies.

(2) The governing body shall have the power, by resolution, to make expenditures from the fund as it may from time to time determine. Expenditures shall be made for the promotion and development of recreational, educational, and other activities of the elderly, including motivation of the use of the talents of the elderly.

(3) The governing body may make payment of expenditures to nonprofit corporations or associations engaged in aiding the activities.

History: **En. Sec. 1, Ch. 380, L. 1971; R.C.M. 1947, 71-1701.**

Cross-References

Incorporation of property tax levy into county all-purpose levy, 7-6-2523.

Montana Older Americans Act, Title 52, ch. 3, part 5.

7-16-102. Use of county lands for public parks and recreational grounds. (1) The county commissioners of any county in Montana are hereby authorized to convey to the state of Montana or to any city or town in Montana or to the United States of America any tract of county-owned land, not exceeding 1,280 acres, to be used for the establishment and maintenance of a park or recreational grounds.

(2) The conveyance is subject to the provisions of 7-8-102.

History: **En. Sec. 1, Ch. 139, L. 1935; re-en. Sec. 4487.1, R.C.M. 1935; amd. Sec. 1, Ch, 48, L. 1961; amd. Sec. 1, Ch. 7, L. 1977; R.C.M. 1947, 16-1131(part).**

Parts 2 through 20 reserved

Part 21

General Provisions Affecting County Government

7-16-2101. Construction and maintenance of county cultural, social, and recreational facilities. The board of county commissioners has jurisdiction and power, under such limitations and restrictions as are prescribed by law, to cause a civic center, a youth center, park buildings, museums, recreation centers, and any combination thereof to be erected, furnished, and maintained.

History: **En. Subd. 9, Sec. 1, Ch. 100, L. 1931; re-en. Sec. 4465.8, R.C.M. 1935; amd. Sec. 1, Ch. 56, L. 1947; amd. Secs. 1, 2, Ch. 238, L. 1947; amd. Secs. 1, 2, Ch. 5, L. 1949; amd. Sec. 1, Ch. 76, L. 1957; amd. Sec. 1, Ch. 150, L. 1959; amd. Sec. 1, Ch. 130, L. 1973; R.C.M. 1947, 16-1008A(part).**

7-16-2102. Authorization for tax levy for parks and certain cultural, social, and recreational facilities. (1) The board of county commissioners may annually levy on the taxable property of the county, in the same manner and at the same time as other county taxes are levied, a special tax, not to exceed 2 mills on each dollar of the taxable valuation for any one year, for the purpose of maintaining, operating, and equipping parks, cultural facilities, and any county-owned civic center, youth center, recreation center, recreational complex, or any combination thereof.

(2) (a) The board of county commissioners must submit the question of imposing or the continued imposition of the property tax mill levy provided in subsection (1) to the electors of the county at the next general election if a petition requesting such an election, signed by at least 15% of the resident

taxpayers of the county, is filed with the county clerk. The petition must be filed with the county clerk at least 90 days prior to the date of the general election.

(b) The question will be submitted substantially as follows:

☐ FOR the imposition (or continued imposition) of a property tax, not to exceed 2 mills, for county parks and for county-owned cultural, social, and recreational facilities.

☐ AGAINST the imposition (or continued imposition) of a property tax for county parks and for county-owned cultural, social, and recreational facilities.

(c) The board of county commissioners shall levy such a tax for the 2 subsequent fiscal years if the question for the imposition of the tax is approved by a majority of the electors voting on the question.

(3) All laws applicable to the collection of county taxes shall apply to the collection of the tax provided herein.

History: En. Sec. 1, Ch. 45, L. 1955; amd. Sec. 1, Ch. 26, L. 1973; R.C.M. 1947, 16-1179(part); amd. Sec. 1, Ch. 639, L. 1985.

Compiler's Comments

Exception for Levy Currently Authorized: Section 3, Ch. 639, L. 1985, provided: "Any property tax levied under the provisions of 7-16-2102(1) before October 1, 1985, continues to be authorized, and the amendments to 7-16-2102 enacted in section 1 of this act [1985 amendment to 7-16-2102] do not apply to such levies."

7-16-2103. Establishment of fund. (1) All funds derived from the tax authorized by 7-16-2102 constitute a separate fund deposited with the county treasurer. The fund shall not be used for any purposes except for county parks and any civic center, cultural facility, youth center, recreation center, recreational complex, or any combination thereof.

(2) All claims against such separate fund shall be presented and acted upon in the same manner as are all other claims against the county.

History: En. Sec. 1, Ch. 45, L. 1955; amd. Sec. 1, Ch. 26, L. 1973; R.C.M. 1947, 16-1179(part); amd. Sec. 2, Ch. 639, L. 1985.

7-16-2104. Multicounty youth guidance centers. Two or more counties of this state may, through action of their respective boards of county commissioners, join together by contract in the establishment of a joint county youth guidance center. The cost and expenses of such joint county youth guidance center shall be apportioned between or among the contracting counties on such a basis as to be agreed upon by said contracting counties.

History: En. Sec. 1, Ch. 24, L. 1961; R.C.M. 1947, 16-1008B.

7-16-2105. Acquisition of land by county for public recreational or cultural purposes. (1) The counties of this state are authorized to acquire, by purchase, grant, deed, gift, devise, condemnation, or otherwise, lands suitable for public camping, public recreational purposes, civic centers, youth centers, museums, recreational centers, and any combination thereof or may lease the land tracts, each of which must be situated as to offer ready access to a public highway.

(2) This section may not be construed as amending or repealing 7-16-2201 through 7-16-2204.

History: **En. Sec. 1, Ch. 51, L. 1929; re-en. Sec. 4444.1, R.C.M. 1935; amd. Secs. 1, 2, Ch. 239, L. 1947; R.C.M. 1947, 62-101; amd. Sec. 9, Ch. 543, L. 1995.**

Compiler's Comments

1995 Amendment: Chapter 543 at end substituted "7-16-2204" for "7-16-2205"; and made minor changes in style.

Cross-References

Powers of Park Board, 7-16-2321.

7-16-2106. Limitation on use of lands. All tracts of land acquired under 7-16-2105 shall be set aside and used exclusively for public camping and recreational purposes, and each park so established shall be given an appropriate name or number.

History: **En. Sec. 2, Ch. 51, L. 1929; amd. Sec. 1, Ch. 137, L. 1935; re-en. Sec. 4444.2, R.C.M. 1935; amd. Sec. 1, Ch. 129, L. 1943; amd. Sec. 1, Ch. 115, L. 1945; amd. Sec. 1, Ch. 229, L. 1959; amd. Sec. 1, Ch. 75, L. 1974; R.C.M. 1947, 62-102(part).**

7-16-2107. Expenditures for county parks. Except as otherwise provided by law, there are no restrictions on expenditures for the purpose of acquiring, maintaining, and equipping county parks.

History: **En. Sec. 2, Ch. 51, L. 1929; amd. Sec. 1, Ch. 137, L. 1935; re-en. Sec. 4444.2, R.C.M. 1935; amd. Sec. 1, Ch. 129, L. 1943; amd. Sec. 1, Ch. 115, L. 1945; amd. Sec. 1, Ch. 229, L. 1959; amd. Sec. 1, Ch. 75, L. 1974; R.C.M. 1947, 62-102(part).**

7-16-2108. Authorization to levy tax and establish fund for establishment and maintenance of programs and employee training for day-care facilities. (1) The governing body of a county, city, town, or municipality may in its discretion establish a fund to establish and maintain programs for the operation of licensed day-care centers and homes within the geographic boundaries of the governing body by a levy of up to 1 mill on each dollar of taxable property of said governing body. The tax levy shall be in addition to all other tax levies.

(2) The governing body shall have the power, by resolution, to make expenditures from the fund as it may from time to time determine, provided that expenditures shall be made solely for the establishment, maintenance, and development of programs for and training of operators and employees of day-care centers and homes.

History: **En. Sec. 1, Ch. 244, L. 1983.**

Cross-References

Municipal day-care facilities, 7-16-4114.

Child day-care centers, Title 52, ch. 2, part 7.

7-16-2109. Single tax for county fair activities, county parks, and certain cultural, social, and recreational facilities — restriction. (1) Except as provided in subsection (2), the county commissioners of a county who have levied taxes pursuant to both 7-16-2102 and 7-21-3410 before January 1, 1993, may combine the two taxes into a single tax that may not exceed 3 ½ mills on each dollar of the taxable valuation for any 1 year for the purpose of maintaining, operating, and equipping county fair activities, county parks, cultural facilities, and any county-owned civic center, youth center, recreation center, recreational complex, or any combination thereof. The money collected may be distributed among the activities and facilities as determined by the county commissioners.

(2) (a) The board of county commissioners shall submit the question of imposing or continuing the imposition of the single tax provided for in subsection (1) to the electors of the county at the next general election if a petition requesting a vote on the single tax, signed by at least 15% of the resident taxpayers of the county, is filed with the county clerk at least 90 days prior to the date of the general election.

(b) The question must be submitted substantially as follows:

☐ FOR imposition (or continued imposition) of a property tax, not to exceed 3 1/2 mills, for county fair activities, county parks, and county-owned cultural, social, and recreational facilities.

☐ AGAINST imposition (or continued imposition) of a property tax, not to exceed 3 1/2 mills, for county fair activities, county parks, and county-owned cultural, social, and recreational facilities.

(c) The board of county commissioners shall levy the tax for the 2 subsequent fiscal years if the imposition or continued imposition of the single tax is approved by a majority of the electors voting on the question.

History: En. Sec. 1, Ch. 48, L. 1993.

7-16-2110 through 7-16-2120 reserved.

7-16-2121. Temporary permit for operation of out-of-state motorboat — violation — penalty — disposition of proceeds. (1) A temporary permit may be required by a county for operation of a motorboat on waters within the county if the motorboat is from a state that requires a similar temporary permit for operation in that state of a motorboat licensed in Montana. The permit may be purchased from the county for a fee of $10. When properly affixed to the motorboat, such permit authorizes the operation of the motorboat for a period of 30 days within the county. The county shall provide reasonable notice of the permit requirement and shall make the permits available to the public.

(2) The temporary permit must be issued in the form of a decal that must denote the time during which it is valid. The decal must be conspicuously displayed on the motorboat during all times of operation.

(3) A person who operates a motorboat in violation of 23-2-511(1)(c) or this section is guilty of a misdemeanor and shall be fined no more than $50.

(4) All proceeds received by the county from payment of the permit fee must be used in enforcing compliance with the temporary permit and developing and maintaining public boating access and facilities.

History: En. Sec. 2, Ch. 118, L. 1987.

Part 22

County Museums and Facilities for the Arts

Part Cross-References

Definition of single purpose, 7-14-2531.

Acquisition of land by county, 7-16-2105.

7-16-2201. Definition of museums. For the purposes of this part, the word "museums" means buildings or parts of buildings of which a principal purpose is the exhibition, display, or performance of matters of historical, artistic, cultural, or scientific interest.

History: **En. Sec. 1, Ch. 17, L. 1945; amd. Sec. 1, Ch. 173, L. 1975; R.C.M. 1947, 16-1163(part); amd. Sec. 1, Ch. 313, L. 1989.**

7-16-2202. Establishment and acquisition of museums and facilities for the arts and the humanities — grant programs for private, nonprofit museums and private, nonprofit facilities for the arts and the humanities. The board of county commissioners of each county of the state, in addition to all other powers conferred upon them, have the authority to:

(1) establish or acquire museums, collections of exhibits, and articles, matters, and things to be included in or added to the museums and collections;

(2) contribute to publicly owned museums not owned by the county;

(3) provide facilities for the presentation of visual and performing arts and similar cultural activities; and

(4) establish a program to provide grants to private, nonprofit museums and private, nonprofit facilities for the arts and the humanities.

History: **En. Sec. 1, Ch. 17, L. 1945; amd. Sec. 1, Ch. 173, L. 1975; R.C.M. 1947, 16-1163(part); amd. Sec. 1, Ch. 455, L. 1985; amd. Sec. 2, Ch. 313, L. 1989; amd. Sec. 1, Ch. 440, L. 1993.**

7-16-2203. Board of trustees. The board of county commissioners of each county owning or acquiring a museum, facility for the arts, or collection of exhibits may, at the first regular meeting of the board after acquiring a museum, facility, or collection, appoint a board of trustees, subject to the provisions of 7-1-201 through 7-1-203, for the administration of the county museum fund as provided in this part.

History: **En. Sec. 3, Ch. 17, L. 1945; R.C.M. 1947, 16-1165(part); amd. Sec. 3, Ch. 313, L. 1989; amd. Sec. 1, Ch. 681, L. 1991; amd. Sec. 10, Ch. 543, L. 1995.**

Compiler's Comments

1995 Amendment: Chapter 543 near end inserted "subject to the provisions of 7-1-201 through 7-1-203"; deleted (2) that read: "(2) The board of county commissioners shall, at a public meeting, pass a resolution establishing the number of members on the board of trustees and the terms of the appointments. The board of trustees must consist of at least three members and no more than nine members, and the members of the board must be residents of the county"; and made minor changes in style.

7-16-2204. *(Temporary)* **Role of board of trustees.** It is the duty of the board:

(1) to have the immediate custody, charge, and control of the museum, facility for the arts, or collection;

(2) to make rules as may be necessary and reasonable for the preservation, upkeep, care, maintenance, operation, support, and display of the museum, facility, or collection; and

(3) to make to the board of county commissioners, not later than July 15 of each year:

(a) a report in writing, detailing all gifts and donations made to the museum, facility for the arts, or collection and the receipts and expenditures during the immediately preceding fiscal year; and

(b) an estimate of the amount to be budgeted for the museum, facility for the arts, or collection in the budget of the county for the then current fiscal year. *(Repealed October 1, 1996—sec. 25, Ch. 543, L. 1995.)*

History: En. Sec. 3, Ch. 17, L. 1945; R.C.M. 1947, 16-1165(part); amd. Sec. 4, Ch. 313, L. 1989.

7-16-2205. Authorization for mill levy. (1) The board of county commissioners of any county owning, acquiring, contributing, or making a grant to any museum, facility for the arts and the humanities, or collection of exhibits as set forth in 7-16-2202:

(a) (i) may make an appropriation in its annual budget for the upkeep, care, maintenance, operation, and support of the museum, facility, or collection;

(ii) may make an appropriation in its annual budget for a grant program for private, nonprofit museums and private, nonprofit facilities for the arts and the humanities; and

(b) in order to meet and take care of the appropriation or grant program, may annually levy a tax not to exceed 2 mills on each dollar of the taxable valuation of the property subject to taxation in the county.

(2) The levy must be made at the same time as other levies are made for county and school purposes.

(3) The proceeds from the collection of the levy must be kept in a special fund by the county treasurer and used, at the discretion of the board of county commissioners, solely for the purpose for which the levy was made.

History: En. Sec. 2, Ch. 17, L. 1945; amd. Sec. 2, Ch. 173, L. 1975; R.C.M. 1947, 16-1164; amd. Sec. 1, Ch. 294, L. 1983; amd. Sec. 2, Ch. 455, L. 1985; amd. Sec. 5, Ch. 313, L. 1989; amd. Sec. 2, Ch. 440, L. 1993.

Part 23

County Board of Park Commissioners

Part Cross-References

Community and urban forestry program, Title 77, ch. 5, part 4.

7-16-2301. Authorization for county board of park commissioners. There may be created in each county a board of park commissioners subject to the provisions of 7-1-201 through 7-1-203.

History: En. Sec. 1, Ch. 306, L. 1967; amd. Sec. 1, Ch. 290, L. 1971; R.C.M. 1947, 16-4801(part); amd. Sec. 11, Ch. 543, L. 1995.

Compiler's Comments

1995 Amendment: Chapter 543 near middle substituted "each county" for "all counties" and at end inserted "subject to the provisions of 7-1-201 through 7-1-203"; and deleted (2) that read: "(2) Such board shall constitute a department of the county government with the powers provided in this part."

7-16-2302. *(Temporary)* **Composition of park board — appointment and term.** (1) The board of park commissioners is composed of the county commissioners and as many other persons as the county commissioners determine are necessary.

(2) The board of county commissioners shall, at a public meeting, pass a resolution establishing the number of members on the park board and the terms of the appointments. The park board must consist of at least three members and no more than nine members, and the members of the board must be residents of the county. *(Repealed October 1, 1996—sec. 25, Ch. 543, L. 1995.)*

History: **En. Sec. 1, Ch. 306, L. 1967; amd. Sec. 1, Ch. 290, L. 1971; R.C.M. 1947, 16-4801(part); amd. Sec. 2, Ch. 681, L. 1991.**

7-16-2303. *(Temporary)* **Qualifications of park commissioners.** The persons appointed must have the same qualifications for the office of park commissioner as are required by 7-4-2201, for the office of county commissioner. *(Repealed October 1, 1996—sec. 25, Ch. 543, L. 1995.)*

History: **En. Sec. 1, Ch. 306, L. 1967; amd. Sec. 1, Ch. 290, L. 1971; R.C.M. 1947, 16-4801(part); amd. Sec. 3, Ch. 681, L. 1991.**

7-16-2304. Repealed. Sec. 8, Ch. 681, L. 1991.

History: **En. Sec. 1, Ch. 306, L. 1967; amd. Sec. 1, Ch. 290, L. 1971; R.C.M. 1947, 16-4801(part).**

7-16-2305. *(Temporary)* **Automatic vacation of office.** Any park commissioner who shall refuse or neglect for a period of 3 consecutive months to attend the meetings of said board without leave of absence from said board or who shall fail for a period of 20 days from and after his appointment to qualify as provided in this part shall be deemed to have vacated his office, and thereupon, his successor may be appointed. *(Repealed October 1, 1996—sec. 25, Ch. 543, L. 1995.)*

History: **En. Sec. 4, Ch. 306, L. 1967; amd. Sec. 3, Ch. 290, L. 1971; R.C.M. 1947, 16-4804(part).**

7-16-2306. *(Temporary)* **Compensation of park commissioners.** No park commissioner shall receive compensation for his services rendered under the provisions of this part, but the actual and necessary expense incurred by any member of the board while acting under the orders of the board in the transaction of any business in its behalf may be paid upon being allowed and audited by the board. *(Repealed October 1, 1996—sec. 25, Ch. 543, L. 1995.)*

History: **En. Sec. 4, Ch. 306, L. 1967; amd. Sec. 3, Ch. 290, L. 1971; R.C.M. 1947, 16-4804(part).**

7-16-2307. *(Temporary)* **Oath of office.** Before entering upon the discharge of his duties, each park commissioner shall take and subscribe to the oath provided by 2-16-211. The oath shall be filed in the office of the county clerk and recorder. *(Repealed October 1, 1996—sec. 25, Ch. 543, L. 1995.)*

History: **En. Sec. 1, Ch. 306, L. 1967; amd. Sec. 1, Ch. 290, L. 1971; R.C.M. 1947, 16-4801(part).**

7-16-2308. *(Temporary)* **Organization of park board.** On the first Monday of May in each year, said board of park commissioners shall meet and organize by electing one of their number president and one of their number vice-president, who shall hold their offices, respectively, for the term of 1 year. *(Repealed October 1, 1996—sec. 25, Ch. 543, L. 1995.)*

History: **En. Sec. 1, Ch. 306, L. 1967; amd. Sec. 1, Ch. 290, L. 1971; R.C.M. 1947, 16-4801(part).**

7-16-2309. *(Temporary)* **Duties of board officers.** The president and, in his absence, the vice-president shall preside at all meetings of the board and shall countersign all warrants issued by the board. *(Repealed October 1, 1996—sec. 25, Ch. 543, L. 1995.)*

History: **En. Sec. 1, Ch. 306, L. 1967; amd. Sec. 1, Ch. 290, L. 1971; R.C.M. 1947, 16-4801(part).**

7-16-2310. *(Temporary)* **Clerk of board of park commissioners.** (1) The board of park commissioners shall have the power to employ a secretary, not a member of the board, who shall be the clerk of the board of park commissioners and attend all meetings of said board and keep correct minutes of all proceedings of said board in a book to be provided by it for that purpose, to be called proceedings of the board of park commissioners of (entitled) county.

(2) It shall be the duty of the secretary to keep an accurate account of all transactions of said board and to make and submit in writing to said board at its first meeting in May in each year a report under oath showing in detail all the receipts and disbursements made by the board during the previous calendar year. The report shall be in duplicate, and after being approved by said board, one of said duplicates shall be filed in the office of the county clerk and recorder and one in the office of the county treasurer. The secretary shall perform such other services as the board from time to time shall require.

(3) In the absence of the secretary at any meeting held by the board, it shall designate one of its members as clerk pro tem to keep the minutes of said meeting, which minutes shall be delivered to the secretary to be transcribed into the record book of said board. *(Repealed October 1, 1996—sec. 25, Ch. 543, L. 1995.)*

History: En. Sec. 5, Ch. 290, L. 1971; R.C.M. 1947, 16-4801.1(part).

7-16-2311. *(Temporary)* **Evidentiary effect of park board minutes.** The minutes of said meeting in said record book, when approved by the board, shall be prima facie evidence of the matters and things there recited in any court in this state. *(Repealed October 1, 1996—sec. 25, Ch. 543, L. 1995.)*

History: En. Sec. 5, Ch. 290, L. 1971; R.C.M. 1947, 16-4801.1(part).

7-16-2312. County park superintendent. The board of park commissioners shall have the power to employ a park superintendent, who may also be the secretary of the park board and who shall attend each regular meeting of the said board and report, either in writing or orally as the board may require, as to the activities, functions, and progress of whatever nature pertaining to the park lands and facilities over which he has supervision. The duties of the park superintendent shall be of a managerial capacity.

History: En. Sec. 5, Ch. 290, L. 1971; R.C.M. 1947, 16-4801.1(2).

7-16-2313. *(Temporary)* **Conduct of park board business.** (1) The board of park commissioners shall hold an annual meeting on the first Monday of May and a meeting at least once in each month in each year at such times as the board shall by rule prescribe. Special meetings may also be held at the call of the president or, in his absence, the vice-president, upon giving to each member of said board at least 24 hours' notice in writing of the time and place of holding such meeting. A member of the board by his appearance at a special meeting shall waive the requirement of written notice.

(2) A majority of the entire board shall be necessary to constitute a quorum for the transaction of the business of said board. *(Repealed October 1, 1996—sec. 25, Ch. 543, L. 1995.)*

History: Ap. p. Sec. 4, Ch. 306, L. 1967; amd. Sec. 3, Ch. 290, L. 1971; Sec. 16-4804, R.C.M. 1947; Ap. p. Sec. 2, Ch. 306, L. 1967; Sec. 16-4802, R.C.M. 1947; R.C.M. 1947, 16-4802(part), 16-4804(part).

7-16-2314. Control of conflict of interest and nepotism. (1) No park commissioner, directly or indirectly, shall be interested in or benefit by any contract made by the board or by its authority or in the furnishing of any supplies for the use of the board.

(2) The laws of nepotism shall apply to employment under this part.

History: (1)En. Sec. 4, Ch. 306, L. 1967; amd. Sec. 3, Ch. 290, L. 1971; Sec. 16-4804, R.C.M. 1947; (2)En. Sec. 2, Ch. 306, L. 1967; Sec. 16-4802, R.C.M. 1947; R.C.M. 1947, 16-4802(part), 16-4804(part).

Cross-References

Nepotism, Title 2, ch. 2, part 3.

7-16-2315 through 7-16-2320 reserved.

7-16-2321. *(Temporary)* **Powers and duties of park board.** A county park board, in addition to powers and duties now given under law, shall have the following powers and duties:

(1) to acquire by gift, grant, purchase, lease, or condemnation lands or facilities within or without the limits of corporate municipalities for parks, playgrounds, recreation areas, swimming pools, athletic fields, skating rinks, museums, zoos, golf courses, camps, multipurpose buildings for civic centers, fieldhouses, gymnasiums, youth centers, libraries, reading and meeting rooms, or combinations thereof;

(2) to furnish and equip and manage and control the same, including establishment by resolution of reasonable and uniform charges for the privilege of using the same;

(3) to lay out, establish, improve, and maintain grounds, parkways, drives, and walks in the parks and recreation areas of the county, make plats thereof and file the same in the office of the county clerk, and determine when and what parks and recreation areas shall be opened to the public;

(4) to pay all obligations authorized to be incurred by the provisions of this part;

(5) to exercise all other powers incident to the duties enjoined by the provisions of this part. *(Repealed October 1, 1996—sec. 25, Ch. 543, L. 1995.)*

History: En. Sec. 2, Ch. 306, L. 1967; R.C.M. 1947, 16-4802(part).

Cross-References

Acquisition of land by county, 7-16-2105.

Powers of County Park District Commission, 7-16-2423.

Eminent domain, Title 70, ch. 30.

7-16-2322. Rules and ordinances to implement part. (1) (a) A county park board, in addition to powers and duties now given under law, has the following powers and duties:

(i) to make rules necessary or convenient to protect and promote the improvement of land and facilities under the care and control of the board and for the protection of birds and animals inhabiting or frequenting land and facilities in parks and public places;

(ii) to make rules for the use of land and facilities by the public; and

(iii) to provide penalties for the violation of the rules.

(b) The rules authorized by subsection (1) have the force of resolutions of the county commissioners.

(2) The county governing body, by the adoption of an ordinance in substantial compliance with the provisions of 7-5-103 through 7-5-107, may:

(a) provide that violations of specific rules adopted pursuant to subsection (1) constitute criminal offenses and are punishable as provided in 7-5-109; and

(b) authorize a county park board to employ a county park warden to enforce park rules and ordinances. A county park warden is not a peace officer, as defined in 46-1-202. The law enforcement powers of a park warden are limited to issuing citations charging violations of park ordinances and rules.

History: **En. Sec. 2, Ch. 306, L. 1967; R.C.M. 1947, 16-4802(part); amd. Sec. 1, Ch. 415, L. 1985; amd. Sec. 250, Ch. 800, L. 1991.**

Cross-References

Montana Administrative Procedure Act not applicable to local governments, 2-4-102.

7-16-2323. Leasing of county land for nonpark purposes. A county park board, in addition to powers and duties now given under law, shall have the power and duty to lease lands owned by the county, heretofore acquired for parks, which, in the judgment of the board, it shall not be advisable to improve as parks, upon such terms and conditions as the board shall deem to be for the best interests of the county. Such lands shall not be leased for a longer time than 5 years and not for a longer time than 1 year without the concurrence of two-thirds of the entire board of park commissioners.

History: **En. Sec. 2, Ch. 306, L. 1967; R.C.M. 1947, 16-4802(part).**

7-16-2324. Sale, lease, or exchange of dedicated park lands. (1) For the purposes of chapter 8, part 25, and this section, lands dedicated to the public use for park or playground purposes under 76-3-621 or a similar statute or pursuant to any instrument not specifically conveying land to a governmental unit other than a county are considered county lands.

(2) A county may not sell, lease, or exchange lands dedicated for park or playground purposes except as provided under chapter 8, part 25, and this section.

(3) Prior to selling, leasing, or exchanging any county land dedicated to public use for park or playground purposes, a county shall:

(a) compile an inventory of all public parks and playgrounds within the county;

(b) prepare a comprehensive plan for the provision of outdoor recreation and open space within the county;

(c) determine that the proposed sale, lease, or exchange furthers or is consistent with the county's outdoor recreation and open space comprehensive plan;

(d) publish notice as provided in 7-1-2121 of intention to sell, lease, or dispose of the park or playground lands, giving the people of the county opportunity to be heard regarding the action;

(e) if the land is within an incorporated city or town, secure the approval of the governing body for the action; and

(f) comply with any other applicable requirements under chapter 8, part 25.

(4) Any revenue realized by a county from the sale, exchange, or disposal of lands dedicated to public use for park or playground purposes must be paid into the park fund and used in the manner prescribed in 76-3-621 for cash received in lieu of dedication.

History: **En. 16-4808 by Sec. 5, Ch. 540, L. 1975; R.C.M. 1947, 16-4808; amd. Sec. 25, Ch. 253, L. 1979; amd. Sec. 28, Ch. 349, L. 1985; amd. Sec. 1, Ch. 468, L. 1995.**

Compiler's Comments

1995 Amendment: Chapter 468 in (1) and (4) substituted "76-3-621" for "76-3-606 and 76-3-607"; and made minor changes in style.

Applicability: Section 13, Ch. 468, L. 1995, provided: "Funds in a park fund that exceed $10,000 as of [the effective date of this act] [October 1, 1995] must be used for park land acquisition and initial development. Funds in a park fund up to $10,000 as of [the effective date of this act] [October 1, 1995] may be used for park maintenance in accordance with a formally adopted park plan."

7-16-2325. Power of park board to employ persons and to make contracts. (1) A county park board, in addition to powers and duties now given under law, shall have the following powers and duties:

(a) to employ and discharge workmen, laborers, engineers, foresters, and others and to fix their compensation;

(b) to make all contracts necessary or convenient for carrying out any and all of the powers conferred and duties enjoined upon said board by this part.

(2) All contracts made by said board shall be in the name of the county and shall be signed by the president or, in his absence, by the vice-president of said board, or upon approval by a majority of the members of the board of park commissioners at a regular meeting of the board at which a quorum is in attendance and voting and with due notice and report being made to the board of county commissioners, such contracts may be signed by the chairman of the board of county commissioners and attested by the county clerk and recorder.

(3) No order or resolution authorizing the making of any contract shall be passed or adopted except by a yea and nay vote, which vote shall be recorded in full in the minutes of the secretary.

History: (1)En. Sec. 2, Ch. 306, L. 1967; Sec. 16-4802, R.C.M. 1947; (2)En. Sec. 4, Ch. 306, L. 1967; amd. Sec. 3, Ch. 290, L. 1971; Sec. 16-4804, R.C.M. 1947; (3)En. Sec. 5, Ch. 306, L. 1967; amd. Sec. 4, Ch. 290, L. 1971; Sec. 16-4805, R.C.M. 1947; R.C.M. 1947, 16-4802(part), 16-4804(part), 16-4805(part).

7-16-2326. Discrimination in employment prohibited. No contract of employment may be entered into except in compliance with federal and state statutes, orders, and rules providing that there may be no discrimination in employment.

History: En. Sec. 6, Ch. 306, L. 1967; amd. Sec. 3, Ch. 38, L. 1977; R.C.M. 1947, 16-4806; amd. Sec. 26, Ch. 253, L. 1979.

Cross-References

Illegal discrimination, Title 49, ch. 2.

7-16-2327. Indebtedness for park purposes. (1) Subject to the provisions of subsection (2), a county park board, in addition to powers and duties now given under law, may contract an indebtedness in behalf of a county, upon the credit of the county, in order to carry out its powers and duties.

(2) (a) The total amount of indebtedness authorized to be contracted in any form, including the then-existing indebtedness, may not at any time exceed 13% of the total of the taxable value of the taxable property in the county, plus the value provided by the department of revenue under 15-36-324(10), ascertained by the last assessment for state and county taxes previous to the incurring of the indebtedness.

(b) Money may not be borrowed on bonds issued for the purchase of lands and improving the land for any purpose until the proposition has been submitted to the vote of those qualified under the provisions of the state constitution to vote at the election in the affected county and a majority vote is cast in favor of the bonds.

History: En. Sec. 2, Ch. 306, L. 1967; R.C.M. 1947, 16-4802(part); amd. Sec. 54, Ch. 614, L. 1981; amd. Sec. 10, Ch. 695, L. 1985; amd. Sec. 6, Ch. 655, L. 1987; amd. Sec. 71, Ch. 11, Sp. L. June 1989; amd. Sec. 15, Ch. 9, Sp. L. November 1993; amd. Sec. 26, Ch. 451, L. 1995; amd. Sec. 12, Ch. 543, L. 1995.

Compiler's Comments

1995 Amendments: Chapter 451 in (2)(a), after "plus the", substituted "value provided by the department of revenue under 15-36-324(10)" for previous formula (see 1995 Session Law for text). Amendment effective January 1, 1996.

Chapter 543 in (1), at end, substituted "in order to carry out its powers and duties" for "for the purposes of 7-16-2321(1) and (2)"; and made minor changes in style.

Applicability: Section 55, Ch. 451, L. 1995, provided: "(1) [This act] applies to oil and natural gas produced and sold on or after January 1, 1996.

(2) (a) [Sections 21 through 26] [7-1-2111, 7-7-2101, 7-7-2203, 7-14-2524, 7-14-2525, and 7-16-2327] apply to county fiscal years beginning after June 30, 1996.

(b) [Sections 38 through 46] [20-9-104, 20-9-141, 20-9-161, 20-9-331, 20-9-333, 20-9-501, 20-9-507, 20-10-144, and 20-10-146] apply to school fiscal years beginning after June 30, 1996.

(3) (a) An operator is subject to provisions of Title 15, chapter 23, parts 1 and 6; Title 15, chapter 36; Title 15, chapter 38; and Title 82, chapter 11, part 1, as those laws read on December 31, 1995, for all oil and natural gas produced and sold by the operator before January 1, 1996.

(b) Except as provided in subsection (3)(c), the payment, collection, and distribution of taxes on oil and natural gas production occurring before January 1, 1996, must be made according to the provisions of the laws referred to in subsection (3)(a) governing the tax in effect on the last day of the tax period in which the activity, enterprise, or product being taxed was engaged in, took place, or was produced and sold.

(c) [Section 19] [15-36-325] applies to the payment, collection, and distribution of the local government severance tax for oil and natural gas produced and sold after December 31, 1994, and before January 1, 1996.

(d) All taxes collected pursuant to audit or collected after the date the tax is payable under the laws referred to in subsection (3)(a) must be distributed according to the statute governing allocation of the tax in effect on the date when the tax liability was incurred."

Cross-References

Park district bonds authorized, 7-16-2433.

7-16-2328. Park fund to be maintained. All money raised by tax for park purposes or received by the board of park commissioners from the sale of hay, trees, or plants or from the use of or leasing of lands and facilities shall be paid into the county treasury. The county treasurer shall keep all such money in a separate fund to be known as the park fund.

History: En. Sec. 3, Ch. 306, L. 1967; amd. Sec. 2, Ch. 290, L. 1971; R.C.M. 1947, 16-4803(part).

7-16-2329. Limitation on incurred liability. The board of park commissioners shall have no power to incur liability on behalf of the county in excess of money on hand in or taxes actually levied for said park fund.

History: En. Sec. 3, Ch. 306, L. 1967; amd. Sec. 2, Ch. 290, L. 1971; R.C.M. 1947, 16-4803(part).

7-16-2330. Allowance of claims. (1) Subject to the provisions of subsection (2), the board of park commissioners shall, at its first regular meeting in each month, audit and allow all just claims against the county, liability for which shall have been incurred by said board.

(2) No claim shall be audited or paid until an itemized account of such claim, in writing and signed by the claimant or his or its authorized agent, shall have been filed in the office of the secretary of said board.

(3) No order or resolution providing for the payment or expenditure of money or creating an obligation in excess of the sum of $25 shall be passed or adopted except by a yea and nay vote, which vote shall be recorded in full in the minutes of the secretary.

History: En. Sec. 5, Ch. 306, L. 1967; amd. Sec. 4, Ch. 290, L. 1971; R.C.M. 1947, 16-4805(part).

7-16-2331. Disbursement of money. All money paid out by the park commissioners under the provisions of this part shall be by warrant drawn upon the county treasury, which may be signed by the secretary and countersigned by the president or, in his absence, by the vice-president of the board of park commissioners. Upon approval by a majority of the members of the board of park commissioners at a regular meeting of the board at which a quorum is in attendance and voting and with due notice and report being made to the board of county commissioners, payments so authorized may be made by warrant drawn upon the county treasury, signed by the chairman of the board of county commissioners and countersigned by the county clerk and recorder.

History: En. Sec. 3, Ch. 306, L. 1967; amd. Sec. 2, Ch. 290, L. 1971; R.C.M. 1947, 16-4803(part); amd. Sec. 27, Ch. 253, L. 1979.

7-16-2332. Acceptance of federal aid authorized. The park commissioners shall have authority to accept grants or loans from the United States government, subject to agreements in conformance to federal laws and regulations relating thereto, notwithstanding any provision of this part or other state statutes to the contrary.

History: En. Sec. 7, Ch. 306, L. 1967; R.C.M. 1947, 16-4807.

Part 24
County Park Districts

Part Cross-References

State parks, Title 23, ch. 1, part 1.

Community and urban forestry program, Title 77, ch. 5, part 4.

7-16-2401. Park and recreation land — definition. As used in this part, "park and recreation land" means real property, buildings, and fixtures on:

(1) land designated as park land or recreational land by the grant or deed of such land to the county;

(2) land owned, leased, or otherwise possessed by a county and which the governing body of a county has designated as park or recreational land;

(3) land belonging to a public or private entity or person who has donated the recreational rights to such land to a county park district on behalf of the county; or

(4) land which, by agreement between an owner of land and a county park district, the district may use for park or recreational purposes.

History: En. Sec. 1, Ch. 377, L. 1985.

7-16-2402. Duties of county park district. A county park district shall operate and maintain park and recreation land within the district and may conduct such programs relating to parks and recreation and make such improvements to such land as the county park district commissioners consider appropriate.

History: **En. Sec. 2, Ch. 377, L. 1985.**

7-16-2403. Territory of county park district. A county park district may contain the entire territory of a county, a part of a county, or territory in more than one county. A county park district may include incorporated municipalities within a county.

History: **En. Sec. 3, Ch. 377, L. 1985; amd. Sec. 1, Ch. 144, L. 1993.**

Cross-References

Use of county lands for public parks and recreational grounds, 7-16-102.

7-16-2404 through 7-16-2410 reserved.

7-16-2411. Creation of county park district. (1) Proceedings for the creation of a county park district may be initiated by:

(a) a petition signed by not less than 10% of the qualified electors of the proposed park district; or

(b) a resolution of intent adopted by the county governing body, calling for the creation of a county park district.

(2) The petition or resolution must contain:

(a) the boundaries of the proposed district;

(b) the proposed maximum property tax mill levy that could be levied on property owners within the district for the operation of the district; and

(c) the proposed number of members of the county park district commission. The number of members must be an odd number and may not be less than three.

(3) When the territory to be included in the proposed district lies in more than one county, a petition must be presented to the governing body of each county in which the territory lies. Each petition must be signed by not less than 10% of the qualified electors of the territory within the county proposed to be included in the district.

(4) Upon receipt of a petition for the creation of a county park district, the county clerk shall examine it and within 15 days either reject the petition if it is insufficient under the provisions of subsection (1), (2), or (3) or certify that the petition is sufficient and present it to the county governing body at its next meeting.

(5) The text of the petition or resolution must be published as provided in 7-1-2121 in each county in which the territory of the proposed district lies.

(6) At the hearing, the county governing body shall hear:

(a) testimony of all interested persons on whether a county park district should be created;

(b) testimony regarding the proposed boundary, property tax mill levy, and number of members of the district commission; and

(c) any other matter relating to the proposed district.

(7) After the hearing, if the county governing body determines that the proposed park district should be created, it shall by resolution set the boundaries of the proposed park district, the maximum mill levy for the proposed park district, and the number of members to be on the district commission. The resolution must also call for an election on the question of whether to create the county park district. The election must be held in conjunction with a regular

or primary election, provided that at least 75 days have elapsed between the adoption of the resolution and the election.

History: En. Sec. 4, Ch. 377, L. 1985; amd. Sec. 2, Ch. 144, L. 1993; amd. Sec. 56, Ch. 387, L. 1995.

Compiler's Comments

1995 Amendment: Chapter 387 in (7), in third sentence before "election", substituted "regular or primary" for "regularly scheduled"; and made minor changes in style.

7-16-2412. Election on creation of district. (1) The election on the question of whether to create a county park district must be conducted as provided in Title 13.

(2) Only qualified electors residing within the proposed park district may vote on the question of whether to create the district.

(3) The question of creating a county park district shall be submitted to the electors in substantially the following form:

☐ FOR the creation of a county park district which may levy not more than .... mills of property tax for the operation of the district.

☐ AGAINST the creation of a county park district.

History: En. Sec. 5, Ch. 377, L. 1985; amd. Sec. 3, Ch. 144, L. 1993.

Cross-References

Local election administration, Title 13, ch. 1, part 3.

7-16-2413. Formation of county park district — appointment of initial commission. (1) If a majority of the votes cast at the election in each municipality or part of a municipality and in the unincorporated territory of each county included in the proposed district approve the formation of the park district, the governing body of each county shall, within 10 days of receipt of the official canvass of the result, certify that the district is formed.

(2) Within 30 days after the certification of the formation of the district, the governing body of each county with territory included in the district shall jointly appoint the initial members of the county park district commission. The members shall serve until their successors are elected and qualified.

History: En. Sec. 6, Ch. 377, L. 1985; amd. Sec. 4, Ch. 144, L. 1993.

Cross-References

General authority of County Commissioners, 7-5-2101.

7-16-2414 through 7-16-2420 reserved.

7-16-2421. Election of commissioners. (1) After appointment of the initial commission and except in the case of vacancies, all members of the county park district commission must be elected by the electors of the district.

(2) The election of members to the commission must be held in conjunction with the school elections held pursuant to 20-3-304.

(3) Candidates for the office of member of the county park district commission must be nominated by petition filed with the office of the election administrator not earlier than 135 days or later than 75 days prior to the election day and signed by at least five electors of the district.

(4) If the county park district lies in more than one county, the petition for nomination must be presented to the election administrator whose county contains the largest percentage of the territory of the district.

(5) If no nomination petition is filed for an office, the county governing body shall appoint a member to fill the term. A person appointed pursuant to this subsection has the same term and obligations as a person elected to fill the office. If there are no petitions of nomination for members of the commission, no election need be held.

(6) The term of office of elected members commences upon their being elected and qualified. The term of office of an elected member of the county park district commission is 4 years, except that a simple majority of the members of the first elected board shall serve terms of 2 years, with a minority of the board serving terms of 4 years. The members serving 2-year terms must be selected by lot.

(7) A vacancy in the office of a member must be filled by appointment by the remaining members of the commission. The term of the appointed member expires upon the election and qualification of an elected successor or upon the election of a member to fill the unexpired term of the vacant office. The election must be held at the next scheduled school election held pursuant to 20-3-304.

History: En. Sec. 7, Ch. 377, L. 1985; amd. Sec. 1, Ch. 123, L. 1989; amd. Sec. 5, Ch. 144, L. 1993.

Cross-References

Local election administration, Title 13, ch. 1, part 3.

7-16-2422. Compensation of members of county park district commission. Members of a county park district commission serve without compensation.

History: En. Sec. 8, Ch. 377, L. 1985.

7-16-2423. Powers of county park district commission. A county park district commission has all powers necessary for the betterment, operation, maintenance, and administration of park and recreation land within the territory of the district. In the exercise of this general grant of powers, the county park district commission may:

(1) employ or contract with administrative, professional, and other personnel necessary for the operation of the district;

(2) lease, purchase, or contract for the purchase of personal property, including property which after purchase constitutes a fixture on real property;

(3) lease, purchase, or contract for the purchase of buildings and facilities on lands controlled by the district and equip, operate, and maintain such buildings and facilities;

(4) adopt by resolution rules for the operation and administration of all parks and recreational facilities under its control;

(5) impose by resolution and collect charges for such services and facilities provided by the district as the commission considers necessary for the prudent operation of the district;

(6) establish a property tax mill levy for the operation of the district as provided in 7-16-2431;

(7) enter into agreements with any public or private entity or person for the operation of parks or recreational areas either by the district on behalf of the landowner or by another entity on behalf of the district;

(8) with the concurrence of the county governing body or bodies, accept donations of land or recreational-type easements on land within the district for park or recreational purposes on behalf and in the name of the county or counties;

(9) accept donations and devises of money or personal property.

History: En. Sec. 9, Ch. 377, L. 1985; amd. Sec. 6, Ch. 144, L. 1993.

Cross-References

Powers and duties of park board, 7-16-2321.

7-16-2424 through 7-16-2430 reserved.

7-16-2431. District budget — property tax levy. (1) The county park district commission shall annually prepare a budget for the ensuing fiscal year and present the budget to the governing body of each county with territory included in the district at the regular budget meetings as prescribed in Title 7, chapter 6, part 23, and certify the amount of money necessary for the operation of the district for the ensuing fiscal year.

(2) The county governing body shall, annually at the time of levying county taxes, fix and levy a tax in mills on all taxable property within the district sufficient to raise the amount certified by the county park district commission. The tax levied may not in any year exceed the maximum amount approved by the electorate in 7-16-2411 or 7-16-2432.

History: En. Sec. 10, Ch. 377, L. 1985; amd. Sec. 7, Ch. 144, L. 1993.

Cross-References

County taxation, Title 7, ch. 6, part 25.

7-16-2432. Election to change maximum property tax mill levy. (1) The maximum property tax mill levy authorized for the operation of a county park district may be changed by an election on the question of changing the maximum mill levy.

(2) A vote on the question of raising or lowering the maximum property tax mill levy in the district may be initiated by:

(a) a petition signed by not less than 15% of the electorate of the district; or

(b) a resolution of the county park district commission.

(3) The petition or resolution must set forth the proposed new maximum mill levy for the operation of the district.

(4) Upon receipt of a petition for a change in the maximum mill levy, certified by the county clerk as sufficient under this section, or a resolution for such a change adopted by the county park district commission, the county governing body shall submit to the electorate of the district, at the next election at which members are elected to the county park district commission, a ballot question on changing the maximum mill levy. The election on the question of changing the maximum mill levy must be held as provided in Title 13. The question must be submitted to the electors of the district in substantially the following form:

☐ FOR changing the authorized maximum property tax mill levy for the operation of the county park district from .... to .....

☐ AGAINST changing the authorized maximum property tax mill levy for the operation of the county park district.

(5) If a county park district includes one or more municipalities or parts of municipalities, separate majorities of those voting on the question of changing the property tax mill levy are required of those voting who reside within each municipality and of those not residing within a municipality.

(6) The new maximum property tax mill levy is authorized for the following tax year if approved by a simple majority of the votes on the question.

History: **En. Sec. 11, Ch. 377, L. 1985.**

Cross-References

Local election administration, Title 13, ch. 1, part 3.

7-16-2433. Park district bonds authorized. (1) A county park district may borrow money by the issuance of its bonds to provide funds for payment of all or part of the cost of construction, acquisition, furnishing, equipping, extension, and betterment of park facilities and to provide an adequate working capital for such facilities.

(2) The amount of bonds issued for such purchase and outstanding at any time may not exceed 20% of the taxable value of the property within the district as ascertained by the last assessment for state and county taxes previous to the issuance of such bonds.

(3) Such bonds must be authorized, sold, and issued and provisions made for their payment in the manner and subject to the conditions and limitations prescribed for bonds of school districts by Title 20, chapter 9, part 4.

History: **En. Sec. 12, Ch. 377, L. 1985.**

Cross-References

Indebtedness for park purposes, 7-16-2327.

7-16-2434 through 7-16-2440 reserved.

7-16-2441. Alteration of district boundaries. (1) The boundaries of a county park district may be enlarged by the annexation of contiguous territory in the county or it may be reduced in size by the withdrawal of territory from the district after an election on the question approved by simple majorities of the electorate involved.

(2) The alteration of the district boundary may be initiated in the same manner as the creation of the district, except the applicable resolutions, hearings, and procedures must be adopted and conducted by the county park district commission and not by the county governing body. If the alteration is proposed by petition, the petition must be signed by 15% of the electorate in the territory to be annexed or withdrawn from the district and certified as sufficient by the county clerk.

(3) (a) In the case of annexation, the vote on the question requires the separate majorities of the electorate of the territory to be annexed and the electorate of the then constituted district.

(b) In the case of withdrawal of territory, only the electorate of the territory to be withdrawn may vote on the question.

(4) A change in the boundaries of a district is effective on January 1 of the year following the election authorizing the change in boundaries.

History: **En. Sec. 13, Ch. 377, L. 1985.**

7-16-2442. Dissolution of county park district. (1) A county park district may be dissolved after an election on the question of dissolving the district. The process of dissolving the district may be initiated by a petition of 25% of the electorate of the district or by a resolution of intent to dissolve the district adopted by either the county park district commission or the county governing body.

(2) Upon receipt of a petition that has been certified by the county clerk as sufficient under this section or upon the adoption of a resolution of intent, the county governing body shall call a public hearing on the question of dissolving the district and cause notice of the hearing to be published in the official county newspaper.

(3) At the public hearing, the county governing body shall hear testimony of interested persons regarding the dissolution of the district. After the public hearing, the county governing body may either submit the question of dissolving the district to the electorate of the district or it may call for a public hearing on the question of altering the boundaries of the district. If the county governing body calls for a public hearing on the question of altering the boundaries of the district by withdrawal of territory, it shall publish notice of the hearing in the official county newspaper. The notice must state the boundaries of the area proposed to be withdrawn from the district. After hearing testimony at the hearing, the county governing body may submit the question of either dissolving the district or altering the district by withdrawal of specified territory from the district to the electorate of the district.

(4) The question must be submitted by a resolution calling for an election on either dissolving the district or altering the boundaries of the district by withdrawal of land from the district. The county governing body shall schedule the election in conjunction with any other regularly scheduled election. The election on the question must be conducted as provided in Title 13.

(5) The question of withdrawal of territory under this section must be voted on separately by the electorate of the territory to be withdrawn and the electorate of the balance of the territory of the district. The question fails unless a simple majority of those voting on the question in each of the two territories authorize altering the district boundary. If the question passes, the boundary alteration is effective the following January 1. If the question fails, the county governing body shall by resolution call for an election on the question of dissolving the district.

History: **En. Sec. 14, Ch. 377, L. 1985; amd. Sec. 57, Ch. 387, L. 1995.**

Compiler's Comments

1995 Amendment: Chapter 387 in (4), in second sentence after "body", substituted "shall" for "may call a special election for such purposes, or it may"; and made minor changes in style.

7-16-2443. Effect of dissolution. (1) If dissolution of a county park district is authorized by a majority of the electorate of the district, the county governing body shall order the dissolution and file the order with the county clerk. The dissolution is effective upon the earlier of the following:

(a) 6 months after the date of filing of the order; or

(b) certification by the members of the county park commission that all debts and obligations of the district have been paid, discharged, or irrevocably settled.

(2) If debts or obligations of the district remain unsatisfied after the dissolution of the district, the county governing body shall, for as long as necessary, levy a property tax, in an amount not to exceed the voted maximum authorized by the district, on all taxable property that is in the territory formerly comprising the district, to be used to discharge the debts of the former district. If the electors of the district lowered the maximum amount to be levied for the operation of the district within 2 calendar years prior to the election authorizing the dissolution, the county governing body is authorized to levy a property tax not to exceed the maximum levy authorized prior to the reduction of the maximum levy for the discharge of the district's obligations.

(3) Any assets of the district remaining after all debts and obligations have been discharged become the property of the county.

History: En. Sec. 15, Ch. 377, L. 1985.

Parts 25 through 40 reserved

Part 41

General Provisions Affecting Municipal Government

7-16-4101. Municipal authority to establish, alter, and maintain parks. The city or town council has power to lay out, establish, open, alter, widen, extend, grade, pave, or otherwise improve parks and to vacate the same.

History: En. Subd. 6, Sec. 5039, R.C.M. 1921; amd. Sec. 1, Ch. 115, L. 1925; amd. Sec. 1, Ch. 20, L. 1927; re-en. Sec. 5039.5, R.C.M. 1935; R.C.M. 1947, 11-906(part).

Cross-References

Municipal authority — public grounds, 7-14-4101.

7-16-4102. Planting and protection of trees. The city or town council has power to provide for the planting of trees and the protection of the same.

History: En. Subd. 59, Sec. 5039, R.C.M. 1921; amd. Sec. 1, Ch. 115, L. 1925; amd. Sec. 1, Ch. 20, L. 1927; re-en. Sec. 5039.58, R.C.M. 1935; R.C.M. 1947, 11-961.

Cross-References

Community and urban forestry program, Title 77, ch. 5, part 4.

7-16-4103. Authorization to establish various cultural, social, and recreational facilities. (1) All cities or towns incorporated under the laws of the state of Montana, in addition to other powers conferred upon them, may in their discretion procure, construct, establish, maintain, and operate swimming pools, skating rinks, playgrounds, civic centers, youth centers, and museums and defray the cost and expense of procuring, constructing, establishing, equipping, maintaining, and operating the same from the funds of said city or town raised for such purposes.

(2) Power and authority is hereby granted to the city or town council of all cities and towns incorporated under the laws of Montana to make and pass all bylaws, ordinances, resolutions, rules, and orders necessary for the procurement, establishment, equipment, maintenance, regulation, and operation of swimming pools, skating rinks, playgrounds, civic centers, youth centers, museums, and combinations thereof, including the power to establish by ordinance a reasonable and uniform charge for the privilege of using the same.

(3) Said city or town council is further authorized in its discretion to place any or all of said institutions under the control and management of the board of park commissioners.

History: **(1)En. Sec. 1, Ch. 41, L. 1917; re-en. Sec. 5166, R.C.M. 1921; re-en. Sec. 5166, R.C.M. 1935; amd. Sec. 1, Ch. 60, L. 1941; amd. Sec. 2, Ch. 71, L. 1945; Sec. 62-208, R.C.M. 1947; (2), (3)En. Sec. 2, Ch. 41, L. 1917; re-en. Sec. 5167, R.C.M. 1921; re-en. Sec. 5167, R.C.M. 1935; amd. Sec. 2, Ch. 60, L. 1941; amd. Sec. 3, Ch. 71, L. 1945; Sec. 62-209, R.C.M. 1947; R.C.M. 1947, 62-208, 62-209.**

7-16-4104. Authorization for municipal indebtedness for various cultural, social, and recreational purposes. (1) A city or town council or commission may contract an indebtedness on behalf of the city or town, upon the credit thereof, by borrowing money or issuing bonds:

(a) for the purpose of purchasing and improving lands for public parks and grounds;

(b) for procuring by purchase, construction, or otherwise swimming pools, athletic fields, skating rinks, playgrounds, museums, a golf course, a site and building for a civic center, a youth center, or combination thereof; and

(c) for furnishing and equipping the same.

(2) The total amount of indebtedness authorized to be contracted in any form, including the then-existing indebtedness, may not at any time exceed 16.5% of the taxable value of the taxable property of the city or town as ascertained by the last assessment for state and county taxes previous to the incurring of such indebtedness. No money may be borrowed on bonds issued for the purchase of lands and improving the same for any such purpose until the proposition has been submitted to the vote of the qualified electors of the city or town and a majority vote is cast in favor thereof.

History: **En. Sec. 1, Ch. 55, L. 1909; re-en. Sec. 5159, R.C.M. 1921; amd. Sec. 1, Ch. 114, L. 1923; re-en. Sec. 5159, R.C.M. 1935; amd. Sec. 1, Ch. 71, L. 1945; amd. Sec. 1, Ch. 64, L. 1947; R.C.M. 1947, 62-201; amd. Sec. 28, Ch. 253, L. 1979; amd. Sec. 55, Ch. 614, L. 1981.**

7-16-4105. Authorization to levy tax for various cultural, social, and recreational facilities. For the purpose of procuring, equipping, and maintaining public parks, swimming pools, skating rinks, playgrounds, civic centers, youth centers, museums, and combinations thereof, the council or commission in any city or town may levy, in addition to the levy for general municipal or administrative purposes, an amount not exceeding 7 mills on the dollar on the taxable value of the property to be taxed of the city or town.

History: **En. Sec. 415, 5th Div. Comp. Stat. 1887; amd. Sec. 16, p. 185, L. 1889; amd. Sec. 4814, Pol. C. 1895; re-en. Sec. 3342, Rev. C. 1907; amd. Sec. 1, Ch. 103, L. 1911; amd. Sec. 1, Ch. 27, L. 1917; re-en. Sec. 5194, R.C.M. 1921; Cal. Pol. C. Sec. 4371; amd. Sec. 1, Ch. 156, L. 1923; amd. Sec. 1, Ch. 175, L. 1925; re-en. Sec. 5194, R.C.M. 1935; amd. Sec. 1, Ch. 48, L. 1937; amd. Sec. 4, Ch. 71, L. 1945; amd. Sec. 1, Ch. 192, L. 1951; amd. Sec. 1, Ch. 230, L. 1969; amd. Sec. 56, Ch. 566, L. 1977; R.C.M. 1947, 84-4701(part).**

7-16-4106. Acquisition of property for athletic fields and civic stadiums. (1) Every city or town council shall have power to:

(a) acquire by gift, purchase, or condemnation lands for athletic fields and civic stadiums within or without the corporate limits of the municipality;

(b) establish and regulate such fields and civic stadiums;

(c) exercise municipal jurisdiction over the lands so acquired where such lands or any portion thereof are without the corporate limits of the municipality to the same extent as though they were within said corporate limits; and

(d) construct, maintain, and regulate athletic and civic stadiums thereon.

(2) The city or town councils are authorized to set aside or designate portions or tracts of land now owned by any municipality for the purpose of providing athletic fields and civic stadiums.

History: En. Sec. 1, Ch. 68, L. 1929; re-en. Sec. 5167.1, R.C.M. 1935; R.C.M. 1947, 62-210.

Cross-References

Eminent domain, Title 70, ch. 30.

7-16-4107. Use of park funds for public recreation. (1) Any city or town, including any board of park commissioners, may expend funds from the band fund and the park fund of the city or town for the purpose of operating a program of public recreation and playgrounds and for this purpose may acquire, equip, and maintain land, buildings, and other recreation facilities.

(2) Any school district may cooperate in such program.

History: En. Sec. 1, Ch. 71, L. 1939; R.C.M. 1947, 62-211; amd. Sec. 29, Ch. 253, L. 1979.

Cross-References

Tax levy for band fund, 7-16-4113.

Park fund, 7-16-4225.

Public recreation program, 20-7-801.

7-16-4108. Operation of public recreation programs. (1) Any city, town, or school district or any board thereof, including any board of park commissioners, may operate such a program independently or may cooperate in its operation and conduct with any other body authorized hereby to conduct such a program in any manner upon which they may mutually agree, or it or they may delegate the operation of the program to a board of recreation created by any city, town, or school district or any board thereof, including any board of park commissioners, operating or proposing to operate a program independently or with any cooperating bodies in such manner as they may agree, and all money appropriated for the purposes of such program may be expended by such board.

(2) Any corporation, board, or body designated in this section, given authority to operate and conduct a recreation program or given charge of such program, is authorized to employ directors and instructors of said recreational work and to conduct its activities on:

(a) property under its custody and management;

(b) other public property under the custody of any other public corporation, body, or board, with the consent of such corporation, body, or board; and

(c) private property, with the consent of its owners.

History: (1)En. Sec. 2, Ch. 71, L. 1939; Sec. 62-212, R.C.M. 1947; (2)En. Sec. 3, Ch. 71, L. 1939; Sec. 62-213, R.C.M. 1947; R.C.M. 1947, 62-212, 62-213(part).

Cross-References

Operation of public recreation program, 20-7-802.

7-16-4109. Gifts and bequests for public recreation. Any corporation, board, or body designated in 7-16-4108, given authority to operate and conduct a recreation program or given charge of such program, is authorized to accept gifts and bequests in the name or names of the sponsors of said program, as said sponsors may agree, for the benefit of said recreational work.

History: En. Sec. 3, Ch. 71, L. 1939; R.C.M. 1947, 62-213(part).

Cross-References

Authority to accept gifts, 20-7-803.

7-16-4110. Establishment and maintenance of public baths. (1) All cities or towns incorporated under the laws of the state of Montana, in addition to other powers conferred upon them, are hereby empowered and authorized to establish and maintain a public bathing place within said city or town.

(2) Power is hereby granted to the city or town council of all cities and towns incorporated under the laws of the state of Montana to make and pass all bylaws, ordinances, resolutions, and orders necessary for the establishment, maintenance, and regulation of a public bathing place within said city or town, including the power to establish by ordinance a reasonable and uniform charge for the privilege of using said bathing place.

History: En. Secs. 1, 2, Ch. 12, L. 1905; re-en. Secs. 3294, 3295, Rev. C. 1907; re-en. Secs. 5045, 5046, R.C.M. 1921; re-en. Secs. 5045, 5046, R.C.M. 1935; R.C.M. 1947, 11-1008(part), 11-1009.

7-16-4111. Financing of public baths. To defray the cost and expense of maintaining the public bathing place authorized by 7-16-4110, a city or town may contract an indebtedness upon behalf of the city or town and upon the credit thereof by borrowing money or issuing bonds. No money may be borrowed and no bonds may be issued until the proposition has been submitted to the vote of the qualified electors of the city or town and a majority vote is cast therefor.

History: En. Sec. 1, Ch. 12, L. 1905; re-en. Sec. 3294, Rev. C. 1907; re-en. Sec. 5045, R.C.M. 1921; re-en. Sec. 5045, R.C.M. 1935; R.C.M. 1947, 11-1008(part); amd. Sec. 30, Ch. 253, L. 1979.

7-16-4112. Presentation of public band concerts. (1) Cities of the first, second, and third class, as defined by the laws of Montana, and incorporated towns may at their discretion provide public band concerts for the entertainment of their people and to pay therefor out of any money in a fund to be provided in accordance with the provisions of 7-16-4113.

(2) Said band concerts and entertainment shall be given at a place or places and at a time or times to be designated by the city council; provided, however, that said band concerts shall be given not more than twice each week. No band shall be employed in connection with the giving of said band concerts except one having its headquarters in the city or town in which said band concert is given.

History: En. Sec. 1, Ch. 23, L. 1917; amd. Sec. 1, Ch. 167, L. 1921; re-en. Sec. 5047, R.C.M. 1921; re-en. Sec. 5047, R.C.M. 1935; R.C.M. 1947, 11-1010.

7-16-4113. Tax levy for band concerts. For the purpose of providing band concerts, the council or other governing body in any city of the first, second, or third class or of any incorporated town may assess and levy, in addition to the levy for general municipal or administrative purposes, an amount not to exceed 1 mill on the dollar on the taxable value of the property of the city or town subject to taxation.

History: **En. Sec. 2, Ch. 167, L. 1921; re-en. Sec. 5048, R.C.M. 1921; re-en. Sec. 5048, R.C.M. 1935; amd. Sec. 23, Ch. 566, L. 1977; R.C.M. 1947, 11-1011.**

7-16-4114. Authorization to levy tax and establish fund for establishment and maintenance of programs and employee training for day-care facilities. (1) The governing body of a county, city, town, or municipality may in its discretion establish a fund to establish and maintain programs for the operation of licensed day-care centers and homes within the geographic boundaries of the governing body by a levy of up to 1 mill on each dollar of taxable property of said governing body. The tax levy shall be in addition to all other tax levies.

(2) The governing body shall have the power, by resolution, to make expenditures from the fund as it may from time to time determine, provided that expenditures shall be made solely for the establishment, maintenance, and development of programs for and training of operators and employees of day-care centers and homes.

History: **En. 10-802.1 by Sec. 1, Ch. 392, L. 1973; R.C.M. 1947, 10-802.1; amd. Sec. 1, Ch. 244, L. 1983.**

Cross-References

County day-care centers, 7-16-2108.

Child day-care centers, Title 52, ch. 2, part 7.

Part 42
Municipal Board of Park Commissioners

Part Cross-References

Community and urban forestry program, Title 77, ch. 5, part 4.

7-16-4201. Authorization for municipal board of park commissioners. There may be created by ordinance in all cities of the first and second class a board of park commissioners, whether the cities are a council form of government or city-manager form. The ordinance must meet the same requirements as those provided for a county resolution in 7-1-201.

History: **En. Sec. 1, p. 73, L. 1901; re-en. Sec. 3318, Rev. C. 1907; amd. Sec. 1, Ch. 101, L. 1913; re-en. Sec. 5161, R.C.M. 1921; re-en. Sec. 5161, R.C.M. 1935; amd. Sec. 1, Ch. 32, L. 1939; R.C.M. 1947, 62-203(part); amd. Sec. 13, Ch. 543, L. 1995.**

Compiler's Comments

1995 Amendment: Chapter 543 near beginning of first sentence, after "created", inserted "by ordinance" and inserted second sentence regarding ordinance requirements; deleted (2) that read: "(2) Such board of park commissioners shall constitute a department of the city government with the powers provided in this part"; and made minor changes in style.

7-16-4202. *(Temporary)* **Composition of park board.** (1) Except as provided in subsection (2), the board of park commissioners must be composed of the mayor or city manager of the city and six other persons to be appointed by the mayor or city manager of the city with the approval of the city council.

(2) A city authorized by 7-16-4201 to create a board of park commissioners may elect to have its board of park commissioners consist of seven members

appointed by the mayor or the city manager and may elect not to require its mayor or city manager to serve as a member of the board. *(Repealed October 1, 1996—sec. 25, Ch. 543, L. 1995.)*

History: En. Sec. 1, p. 73, L. 1901; re-en. Sec. 3318, Rev. C. 1907; amd. Sec. 1, Ch. 101, L. 1913; re-en. Sec. 5161, R.C.M. 1921; re-en. Sec. 5161, R.C.M. 1935; amd. Sec. 1, Ch. 32, L. 1939; R.C.M. 1947, 62-203(part); amd. Sec. 1, Ch. 409, L. 1993.

7-16-4203. *(Temporary)* **Qualifications of park commissioners.** The six persons to be so appointed shall have the same qualifications for the office of park commissioner as are required by 7-4-4301 for the office of mayor. *(Repealed October 1, 1996—sec. 25, Ch. 543, L. 1995.)*

History: En. Sec. 1, p. 73, L. 1901; re-en. Sec. 3318, Rev. C. 1907; amd. Sec. 1, Ch. 101, L. 1913; re-en. Sec. 5161, R.C.M. 1921; re-en. Sec. 5161, R.C.M. 1935; amd. Sec. 1, Ch. 32, L. 1939; R.C.M. 1947, 62-203(part); amd. Sec. 31, Ch. 253, L. 1979.

7-16-4204. *(Temporary)* **Term of office.** (1) Except as provided in subsection (2), the term of office of each park commissioner shall be 2 years from and after the first day of May of the year in which he is appointed and until his successor is appointed and qualified.

(2) Three of the commissioners first appointed shall hold office for the period of 1 year from and after the first day of May and until their successors are appointed and qualified. *(Repealed October 1, 1996—sec. 25, Ch. 543, L. 1995.)*

History: En. Sec. 1, p. 73, L. 1901; re-en. Sec. 3318, Rev. C. 1907; amd. Sec. 1, Ch. 101, L. 1913; re-en. Sec. 5161, R.C.M. 1921; re-en. Sec. 5161, R.C.M. 1935; amd. Sec. 1, Ch. 32, L. 1939; R.C.M. 1947, 62-203(part).

7-16-4205. *(Temporary)* **Automatic vacation of office.** Any park commissioner who shall refuse or neglect for a period of 3 consecutive months to attend the meetings of said board without leave of absence from said board or who shall fail for a period of 20 days from and after his appointment to qualify as provided in this part shall be deemed to have vacated his office, and thereupon, his successor may be appointed. *(Repealed October 1, 1996—sec. 25, Ch. 543, L. 1995.)*

History: En. Sec. 4, p. 77, L. 1901; re-en. Sec. 3321, Rev. C. 1907; re-en. Sec. 5164, R.C.M. 1921; re-en. Sec. 5164, R.C.M. 1935; R.C.M. 1947, 62-206(part).

7-16-4206. *(Temporary)* **Compensation of park commissioners.** No park commissioner shall receive compensation for his services rendered under the provisions of this part, but the actual and necessary expenses incurred by any member of the board while acting under the orders of the board in the transaction of any business in its behalf may be paid upon being allowed and audited by the board. *(Repealed October 1, 1996—sec. 25, Ch. 543, L. 1995.)*

History: En. Sec. 4, p. 77, L. 1901; re-en. Sec. 3321, Rev. C. 1907; re-en. Sec. 5164, R.C.M. 1921; re-en. Sec. 5164, R.C.M. 1935; R.C.M. 1947, 62-206(part).

7-16-4207. *(Temporary)* **Oath of office.** Before entering upon the discharge of his duties, each park commissioner shall take and subscribe the oath provided by 2-16-211. The oath shall be filed in the office of the city clerk. *(Repealed October 1, 1996—sec. 25, Ch. 543, L. 1995.)*

History: En. Sec. 1, p. 73, L. 1901; re-en. Sec. 3318, Rev. C. 1907; amd. Sec. 1, Ch. 101, L. 1913; re-en. Sec. 5161, R.C.M. 1921; re-en. Sec. 5161, R.C.M. 1935; amd. Sec. 1, Ch. 32, L. 1939; R.C.M. 1947, 62-203(part).

7-16-4208. *(Temporary)* **Organization of park board.** (1) On the first Monday in May in each year, said board of park commissioners shall meet and organize by electing one of their number president and one of their number vice-president, who shall hold their offices, respectively, for the term of 1 year.

(2) The city clerk shall be ex officio clerk of the board of park commissioners. *(Repealed October 1, 1996—sec. 25, Ch. 543, L. 1995.)*

History: En. Sec. 1, p. 73, L. 1901; re-en. Sec. 3318, Rev. C. 1907; amd. Sec. 1, Ch. 101, L. 1913; re-en. Sec. 5161, R.C.M. 1921; re-en. Sec. 5161, R.C.M. 1935; amd. Sec. 1, Ch. 32, L. 1939; R.C.M. 1947, 62-203(part).

7-16-4209. *(Temporary)* **Duties of board officers.** (1) Except as provided in 7-16-4228(2), the president and, in the president's absence, the vice president shall preside at all meetings of the board and shall countersign all warrants issued by the board and perform other duties as are required and directed by the board.

(2) The city clerk, or the clerk's designee, as ex officio clerk of the board of park commissioners, shall attend all meetings of the board and keep correct minutes of all proceedings of the board in a book to be provided for that purpose, to be called the record of the board of park commissioners of the city of ..... It is the duty of the city clerk as the clerk of the board of park commissioners to keep an accurate account of all transactions of the board separate from other city accounts and to make and submit in writing to the board at the first meeting in January in each year a report under oath showing in detail all the receipts and disbursements made by the board during the year. The report must be in duplicate, and after being approved by the board, one of the duplicates must be filed in the office of the city clerk and one in the office of the city treasurer. The city clerk shall perform other services as the board shall require. In the absence of the clerk, or the clerk's designee, at any meeting held by the board, it shall designate one of its number as clerk pro tem to keep the minutes of the meeting, which minutes must be delivered to the clerk to be transcribed into the record book of the board. *(Repealed October 1, 1996—sec. 25, Ch. 543, L. 1995.)*

History: En. Sec. 1, p. 73, L. 1901; re-en. Sec. 3318, Rev. C. 1907; amd. Sec. 1, Ch. 101, L. 1913; re-en. Sec. 5161, R.C.M. 1921; re-en. Sec. 5161, R.C.M. 1935; amd. Sec. 1, Ch. 32, L. 1939; R.C.M. 1947, 62-203(part); amd. Sec. 1, Ch. 12, L. 1989; amd. Sec. 3, Ch. 409, L. 1993.

7-16-4210. *(Temporary)* **Evidentiary effect of park board minutes.** The minutes of said meeting contained in said record book, when approved by the board, shall be prima facie evidence of the matters and things therein recited in any court of this state. *(Repealed October 1, 1996—sec. 25, Ch. 543, L. 1995.)*

History: En. Sec. 1, p. 73, L. 1901; re-en. Sec. 3318, Rev. C. 1907; amd. Sec. 1, Ch. 101, L. 1913; re-en. Sec. 5161, R.C.M. 1921; re-en. Sec. 5161, R.C.M. 1935; amd. Sec. 1, Ch. 32, L. 1939; R.C.M. 1947, 62-203(part).

7-16-4211. *(Temporary)* **Conduct of park board business.** (1) Said board of park commissioners shall hold an annual meeting on the first Monday of May and a meeting at least once in each month in each year at such times as the board shall by rule prescribe. Special meetings may also be held at the call of the president or, in his absence, the vice-president, upon giving to each member of said board at least 24 hours' notice in writing of the time and place of holding such meeting.

(2) A majority of the entire board shall be necessary to constitute a quorum for the transaction of the business of said board. *(Repealed October 1, 1996—sec. 25, Ch. 543, L. 1995.)*

History: **En. Sec. 4, p. 77, L. 1901; re-en. Sec. 3321, Rev. C. 1907; re-en. Sec. 5164, R.C.M. 1921; re-en. Sec. 5164, R.C.M. 1935; R.C.M. 1947, 62-206(part).**

7-16-4212. Control of conflict of interest. No park commissioner shall be interested in any contract made by the board or by its authority or in the furnishing of any supplies for the use of the board.

History: **En. Sec. 4, p. 77, L. 1901; re-en. Sec. 3321, Rev. C. 1907; re-en. Sec. 5164, R.C.M. 1921; re-en. Sec. 5164, R.C.M. 1935; R.C.M. 1947, 62-206(part).**

7-16-4213 through 7-16-4220 reserved.

7-16-4221. *(Temporary)* **Powers and duties of park board.** (1) The board of park commissioners shall have the management and control of all parks belonging to the city and of all trees and other plants upon the streets, avenues, boulevards, and public places within the city and the right to designate the character and quality of all trees and plants planted in such parks, streets, avenues, boulevards, and public places.

(2) Said board of park commissioners shall have the following powers and be charged with the following duties:

(a) to lay out, establish, improve, and maintain parkways, drives, and walks in the parks of the city; to make plats thereof; to file the same in the office of the city clerk; and to determine when and what parks shall be opened to the public;

(b) to plant, cultivate, maintain, and improve all trees and other plants required to be planted, cultivated, and maintained in the parks belonging to the city and in the streets, avenues, boulevards, and public places in the city and for that purpose to establish and maintain nurseries for the growth of trees and plants;

(c) to pay all obligations authorized to be incurred by the provisions of this part;

(d) to exercise all other powers incident to the duties enjoined by the provisions of this part. *(Repealed October 1, 1996—sec. 25, Ch. 543, L. 1995.)*

History: **En. Sec. 2, p. 75, L. 1901; re-en. Sec. 3319, Rev. C. 1907; re-en. Sec. 5162, R.C.M. 1921; re-en. Sec. 5162, R.C.M. 1935; R.C.M. 1947, 62-204(part).**

7-16-4222. Rules to implement part. (1) In addition to the powers and duties established in the ordinance creating the board of park commissioners and the provisions of 7-16-4223 through 7-16-4228, the board of park commissioners has the following powers and duties:

(a) to make all rules necessary or convenient to protect and promote the growth of trees and plants in parks, streets, avenues, alleys, boulevards, and public places under the care and control of the board and for the protection of all birds inhabiting, frequenting, or nesting in the parks, streets, avenues, boulevards, and public places;

(b) to make all rules for the use of parks by the public; and

(c) to provide penalties for the violation of the rules.

(2) The rules authorized by this section have the force of city ordinances and may be enforced as ordinances of the city are enforced.

History: En. Sec. 2, p. 75, L. 1901; re-en. Sec. 3319, Rev. C. 1907; re-en. Sec. 5162, R.C.M. 1921; re-en. Sec. 5162, R.C.M. 1935; R.C.M. 1947, 62-204(3); amd. Sec. 14, Ch. 543, L. 1995.

Compiler's Comments

1995 Amendment: Chapter 543 in (1), at beginning, inserted "In addition to the powers and duties established in the ordinance creating the board of park commissioners and the provisions of 7-16-4223 through 7-16-4228"; and made minor changes in style.

7-16-4223. Leasing of municipal land for nonpark purposes. The board of park commissioners shall have the power and be charged with the duty to lease all lands owned by the city heretofore acquired for parks, whether within or without the city, which, in the judgment of the board, it shall not be advisable to improve as parks, upon such terms and conditions as the board shall deem to be for the best interests of the city. Such lands shall not be leased for a longer term at any one time than 5 years and not for a longer time than 1 year without the concurrence of two-thirds of the entire board of park commissioners.

History: En. Sec. 2, p. 75, L. 1901; re-en. Sec. 3319, Rev. C. 1907; re-en. Sec. 5162, R.C.M. 1921; re-en. Sec. 5162, R.C.M. 1935; R.C.M. 1947, 62-204(5).

Cross-References

Leasing municipal property, 7-8-4201.

7-16-4224. *(Temporary)* **Power of park board to employ persons and to make contracts.** (1) Except as provided in subsection (4), the board of park commissioners has the following powers and duties:

(a) to employ and discharge workers, laborers, engineers, foresters, and others and to fix their compensation, which may not be less than the union scale of wages in force in each individual city of the first class; and

(b) to make all contracts necessary or convenient for carrying out any and all of the powers conferred and duties enjoined upon the board by this part.

(2) All contracts made by the board must be in the name of the city and must be signed by the city clerk and by the president or, in the president's absence, by the vice-president of the board.

(3) An order or resolution authorizing the making of any contract may not be passed or adopted except by a yea and nay vote, which must be recorded in full in the minutes by the clerk.

(4) A city may elect to have all personnel decisions made by the mayor or city manager pursuant to the policies and regulations governing other city personnel decisions. *(Repealed October 1, 1996—sec. 25, Ch. 543, L. 1995.)*

History: (1)En. Sec. 2, p. 75, L. 1901; re-en. Sec. 3319, Rev. C. 1907; re-en. Sec. 5162, R.C.M. 1921; re-en. Sec. 5162, R.C.M. 1935; Sec. 62-204, R.C.M. 1947; (2)En. Sec. 4, p. 77, L. 1901; re-en. Sec. 3321, Rev. C. 1907; re-en. Sec. 5164, R.C.M. 1921; re-en. Sec. 5164, R.C.M. 1935; Sec. 62-206, R.C.M. 1947; (3)En. Sec. 6, p. 78, L. 1901; re-en. Sec. 3323, Rev. C. 1907; re-en. Sec. 5165, R.C.M. 1921; re-en. Sec. 5165, R.C.M. 1935; Sec. 62-207, R.C.M. 1947; R.C.M. 1947, 62-204(part), 62-206(part), 62-207(part); amd. Sec. 2, Ch. 409, L. 1993.

7-16-4225. Park fund to be maintained. All money raised by tax for park purposes or received by the board of park commissioners for the sale of hay, trees, or plants; from the leasing of park lands; or from any other source shall be paid into the city treasury. The city treasurer shall keep all such money in a separate fund to be known as the park fund.

History: En. Sec. 3, p. 76, L. 1901; re-en. Sec. 3320, Rev. C. 1907; re-en. Sec. 5163, R.C.M. 1921; re-en. Sec. 5163, R.C.M. 1935; R.C.M. 1947, 62-205(part).

7-16-4226. Limitation on incurred liability. The board of park commissioners shall have no power to incur liability on behalf of the city in excess of money on hand in or taxes actually levied for said park fund.

History: En. Sec. 3, p. 76, L. 1901; re-en. Sec. 3320, Rev. C. 1907; re-en. Sec. 5163, R.C.M. 1921; re-en. Sec. 5163, R.C.M. 1935; R.C.M. 1947, 62-205(part).

7-16-4227. Allowance of claims. (1) Subject to the provisions of subsection (2) and except as provided in subsection (4), the board of park commissioners shall, at its first regular meeting in each month, audit and allow all just claims against the city, liability for which must have been incurred by the board.

(2) A claim may not be audited or paid until an itemized account of the claim, in writing and verified by the oath of the claimant or the claimant's authorized agent, has been filed in the office of the clerk of the board.

(3) An order or resolution providing for the payment or expenditure of money or creating an obligation in excess of the sum of $25 may not be passed or adopted except by a yea and nay vote, which must be recorded in full in the minutes by the clerk.

(4) A city may elect to have all claims allowed or disallowed by the governing body of the city.

History: En. Sec. 6, p. 78, L. 1901; re-en. Sec. 3323, Rev. C. 1907; re-en. Sec. 5165, R.C.M. 1921; re-en. Sec. 5165, R.C.M. 1935; R.C.M. 1947, 62-207(part); amd. Sec. 4, Ch. 409, L. 1993.

7-16-4228. Disbursement of money. (1) Except as provided in subsection (2), all money paid out by the park commissioners under the provisions of this part must be by warrant drawn upon the city treasury, which must be signed by the city clerk and countersigned by the president or, in the president's absence, by the vice president of the board of park commissioners.

(2) A city may elect to have all warrants signed by the city clerk and countersigned by the mayor or city manager.

History: En. Sec. 3, p. 76, L. 1901; re-en. Sec. 3320, Rev. C. 1907; re-en. Sec. 5163, R.C.M. 1921; re-en. Sec. 5163, R.C.M. 1935; R.C.M. 1947, 62-205(part); amd. Sec. 32, Ch. 253, L. 1979; amd. Sec. 5, Ch. 409, L. 1993.

Part 43

Municipal Winter Work Program (Repealed October 1, 1996)

7-16-4301. *(Temporary)* **Definitions.** As used in this part, the following definitions apply:

(1) "Winter work committee" is a local committee appointed to effect the program.

(2) "Winter work program" means a program to promote and encourage the accomplishment of work that would alleviate the rolls of the unemployed during the winter months. *(Repealed October 1, 1996—sec. 25, Ch. 543, L. 1995.)*

History: En. Sec. 1, Ch. 68, L. 1965; R.C.M. 1947, 41-1901.

7-16-4302. *(Temporary)* **Authorization to appoint winter work committee.** The mayor of any municipality may appoint a winter work committee composed of at least five members. *(Repealed October 1, 1996—sec. 25, Ch. 543, L. 1995.)*

History: En. Sec. 2, Ch. 68, L. 1965; R.C.M. 1947, 41-1902(part).

7-16-4303. *(Temporary)* **Composition of committee.** The members of the winter work committee shall be from various economic groups, including labor, industry, business, welfare, and the news media. In municipalities where the economic groups are represented by organizations, the mayor shall give notice to each organization that he is going to make the appointments and shall set a date by which names must be submitted. On the date set for submittal, he shall select one member from each of the economic groups. *(Repealed October 1, 1996—sec. 25, Ch. 543, L. 1995.)*

History: En. Sec. 2, Ch. 68, L. 1965; R.C.M. 1947, 41-1902(part).

7-16-4304. *(Temporary)* **Terms of committee members.** Original appointments shall be for 5, 4, 3, 2, and 1 years. The original terms shall be determined by lot. After the original appointments have expired, terms shall be for 5 years. *(Repealed October 1, 1996—sec. 25, Ch. 543, L. 1995.)*

History: En. Sec. 3, Ch. 68, L. 1965; R.C.M. 1947, 41-1903(part).

7-16-4305. *(Temporary)* **Compensation of committee members.** There shall be no compensation for service on this committee. *(Repealed October 1, 1996—sec. 25, Ch. 543, L. 1995.)*

History: En. Sec. 3, Ch. 68, L. 1965; R.C.M. 1947, 41-1903(part).

7-16-4306. *(Temporary)* **Meetings and organization of committee.** The committee shall meet within 10 days of appointment by the mayor. They shall select a chairman and a secretary and other necessary officers. Thereafter the committee shall meet at least quarterly and at such other times as may be necessary, convenient, or desired. *(Repealed October 1, 1996—sec. 25, Ch. 543, L. 1995.)*

History: En. Sec. 4, Ch. 68, L. 1965; R.C.M. 1947, 41-1904.

7-16-4307. *(Temporary)* **Promotion of winter work program.** The committee shall work through public service advertising and through public relations to promote the winter work program. *(Repealed October 1, 1996—sec. 25, Ch. 543, L. 1995.)*

History: En. Sec. 5, Ch. 68, L. 1965; R.C.M. 1947, 41-1905.

7-16-4308. *(Temporary)* **Department of labor and industry to cooperate.** The employees of free public employment offices of the department of labor and industry shall cooperate with the committee. *(Repealed October 1, 1996—sec. 25, Ch. 543, L. 1995.)*

History: En. Sec. 6, Ch. 68, L. 1965; R.C.M. 1947, 41-1906; amd. Sec. 1, Ch. 349, L. 1981.

7-16-4309. *(Temporary)* **Filing and use of committee minutes.** Minutes of the meetings of the committee shall be filed by the secretary of the committee with the mayor of the municipality, who shall keep them as other public records. Members of the legislature may use these minutes to determine the employment problems of the municipalities involved. *(Repealed October 1, 1996—sec. 25, Ch. 543, L. 1995.)*

History: En. Sec. 7, Ch. 68, L. 1965; R.C.M. 1947, 41-1907.

CHAPTERS 17 THROUGH 20

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CHAPTER 21

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Chapter Cross-References

Professions and Occupations, Title 37.
Agriculture, Title 80.
Livestock, Title 81.

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Part 21

General County Licensing Authority

Part Cross-References

Temporary permit for operation of out-of-state motorboat, 7-16-2121.

Corporation license or income tax, Title 15, ch. 31.

Mining license tax, Title 15, ch. 37.

Public contractor's license and tax, Title 15, ch. 50.

Electric energy producers' license tax, Title 15, ch. 51.

Telephone company license tax, Title 15, ch. 53.

Freight line company license tax, Title 15, ch. 55.

License tax on vehicles propelled by liquefied petroleum gas, Title 15, ch. 71.

7-21-2101. General licensing power of counties. The board of county commissioners has jurisdiction and power, under such limitations and restrictions as are prescribed by law, to grant such licenses as are provided by law.

History: En. Subd. 17, Sec. 1, Ch. 100, L. 1931; re-en. Sec. 4465.16, R.C.M. 1935; R.C.M. 1947, 16-1019(part).

7-21-2102. Procedure to supply license blanks. (1) The county clerk shall prepare and have printed such blank licenses as may be required, and after affixing his official seal thereto, he shall deliver the same to the county treasurer. At the time of such delivery, he shall charge the county treasurer therewith by appropriate entry in his records showing the amount, numbers, and classes of licenses so furnished.

(2) As licenses are issued and accounted for by the county treasurer, the county clerk shall credit such account with all licenses so issued and accounted for, so that the account will at all times show the number of licenses furnished the treasurer, their numbers, the number issued or canceled, and the number remaining in the hands of the county treasurer.

(3) On the first Monday in each month, the county treasurer must return to the county clerk all licenses unsold and show that he has paid into the county treasury all money collected for licenses sold during the preceding month.

History: (1), (2)En. Sec. 4040, Pol. C. 1895; re-en. Sec. 2746, Rev. C. 1907; amd. Sec. 1, Ch. 34, L. 1909; re-en. Sec. 2410, R.C.M. 1921; Cal. Pol. C. Sec. 3356; amd. Sec. 1, Ch. 54, L. 1933; re-en. Sec. 2410, R.C.M. 1935; Sec. 84-2701, R.C.M. 1947; (3)En. Sec. 4047, Pol. C. 1895; re-en. Sec. 2753, Rev. C. 1907; re-en. Sec. 2417, R.C.M. 1921; Cal. Pol. C. Sec. 3363; re-en. Sec. 2417, R.C.M. 1935; Sec. 84-2706, R.C.M. 1947; R.C.M. 1947, 84-2701, 84-2706.

Cross-References

Role and duties of County Clerk, 7-4-2611.

Office of County Treasurer, 7-4-3002.

County printing, Title 7, ch. 5, part 24.

7-21-2103. Determination of persons required to obtain licenses — classes of licenses. (1) The county treasurer must make diligent inquiry as to all persons in his county liable to pay a license fee as provided in this part.

(2) Whenever the licenses are divided into classes, the county treasurer must require each person to state, under oath or affirmation, the probable amount of business which he, the firm of which he is a member or for which he is an agent or attorney, or the association or corporation of which he is the president, secretary, or managing agent will do in the succeeding 3 months. Thereupon such person, agent, president, secretary, or other officer must

procure a license from the county treasurer for the term desired and the proper class. In all cases where an underestimate has been made by the party applying, the party making the underestimate or the company he represented is required to pay double the sum otherwise required for a license for the next quarter.

History: En. Sec. 4045, Pol. C. 1895; re-en. Sec. 2751, Rev. C. 1907; re-en. Sec. 2415, R.C.M. 1921; Cal. Pol. C. Sec. 3361; re-en. Sec. 2415, R.C.M. 1935; R.C.M. 1947, 84-2704; amd. Sec. 1, Ch. 249, L. 1979.

Cross-References

Office of County Treasurer, 7-4-3002.
Agency, Title 28, ch. 10.
Business corporations, Title 35, ch. 1.
Attorneys at law, Title 37, ch. 61.

7-21-2104. Lien arising from license. (1) All property held or used in any trade, occupation, or profession for which a license is required by the provisions of this part is liable for such license and subject to a lien for the amount thereof. This lien has precedence of any other lien, claim, or demand.

(2) If any person fails or refuses to procure a license before the transaction of the business specified, the county treasurer must seize such property or any other property belonging to such person and sell the same in the manner provided in 15-17-911.

History: En. Sec. 4049, Pol. C. 1895; re-en. Sec. 2755, Rev. C. 1907; re-en. Sec. 2419, R.C.M. 1921; re-en. Sec. 2419, R.C.M. 1935; R.C.M. 1947, 84-2707; amd. Sec. 28, Ch. 587, L. 1987.

Cross-References

Office of County Treasurer, 7-4-3002.
Liens, Title 71, ch. 3.

7-21-2105. Disbursement of license fees. (1) Unless the disposition is otherwise provided for, all money collected by the county treasurer for licenses issued by the county under this chapter must be paid into the treasury of the county.

(2) Unless otherwise provided, the county treasurer shall retain 50% thereof for the use of the county, pay over 45% thereof to the state treasurer for the use of the general fund of the state, and pay over 5% thereof to the state treasurer for deposit in the state special revenue fund to be used by the board of livestock for predatory animal control.

History: En. Sec. 1, Ch. 67, L. 1905; re-en. Sec. 2756, Rev. C. 1907; amd. Sec. 1, Ch. 54, L. 1921; re-en. Sec. 2420, R.C.M. 1921; re-en. Sec. 2420, R.C.M. 1935; amd. Sec. 104, Ch. 147, L. 1963; R.C.M. 1947, 84-2708; amd. Sec. 2, Ch. 249, L. 1979; amd. Sec. 1, Ch. 277, L. 1983.

Cross-References

Office of County Treasurer, 7-4-3002.
General fiscal duties of State Treasurer, 17-1-111.
Fund structure, 17-2-102.

7-21-2106 through 7-21-2110 reserved.

7-21-2111. General license requirements. (1) A license must be procured immediately before the commencement of any business or occupation liable to a license tax from the county treasurer of the county where the applicant desires to transact the same.

(2) The license authorizes the party obtaining the same to transact the business described in such license in his town, city, or particular locality in the county.

(3) Separate licenses must be obtained for each branch establishment or separate house of business located in the same county.

History: **En. Sec. 4043, Pol. C. 1895; re-en. Sec. 2749, Rev. C. 1907; re-en. Sec. 2413, R.C.M. 1921; Cal. Pol. C. Sec. 3359; re-en. Sec. 2413, R.C.M. 1935; R.C.M. 1947, 84-2702(part).**

Cross-References

Assumed business names, Title 30, ch. 13, part 2.

7-21-2112. Compliance with municipal regulation also required. No license issued under this part authorizes any person to carry on any business within the limits of any incorporated city or town having power by its charter to impose or levy city or town license taxes unless such person, in addition to the license provided by this part, also procures the license required by the ordinances or orders of such city or town.

History: **En. Sec. 4043, Pol. C. 1895; re-en. Sec. 2749, Rev. C. 1907; re-en. Sec. 2413, R.C.M. 1921; Cal. Pol. C. Sec. 3359; re-en. Sec. 2413, R.C.M. 1935; R.C.M. 1947, 84-2702(part).**

Cross-References

Municipal licensing authority, Title 7, ch. 21, part 41.

7-21-2113. Effect of failure to comply with licensing requirements. Every person who commences or carries on a business, trade, profession, or calling, for the transaction or carrying on of which a license is required by the provisions of any of the license laws of Montana, without taking out or procuring such license is guilty of a misdemeanor and shall, unless specific punishment is prescribed by some other law of this state, be punishable as in the case of other misdemeanors and, in addition thereto, shall be liable to a penalty of 10% of the amount of said license. This penalty must be added to the amount of said license and collected by the county treasurer at the time of the collection of the license, but the payment of said penalty shall in no event relieve any person from prosecution for such misdemeanor.

History: **En. Sec. 6, p. 200, L. 1897; re-en. Sec. 2780, Rev. C. 1907; amd. Sec. 1, Ch. 25, L. 1921; re-en. Sec. 2443, R.C.M. 1921; re-en. Sec. 2443, R.C.M. 1935; R.C.M. 1947, 84-3209.**

Cross-References

Office of County Treasurer, 7-4-3002.

Classification of offenses, 45-1-201.

Misdemeanor defined, 45-2-101.

Misdemeanor — no penalty specified, 46-18-212.

7-21-2114. Investigation of possible licensing violations. The board of county commissioners shall investigate whether any persons are doing business in the county without a license or if the amount of a license is sufficient. In either event, the treasurer must be officially notified.

History: **En. Sec. 4044, Pol. C. 1895; amd. Sec. 1, Ch. 92, L. 1903; amd. Sec. 1, Ch. 122, L. 1907; re-en. Sec. 2750, Rev. C. 1907; re-en. Sec. 2414, R.C.M. 1921; Cal. Pol. C. Sec. 3360; re-en. Sec. 2414, R.C.M. 1935; R.C.M. 1947, 84-2703(part); amd. Sec. 7, Ch. 79, L. 1983; amd. Sec. 2, Ch. 287, L. 1983; amd. Sec. 9, Ch. 179, L. 1995.**

Compiler's Comments

1995 Amendment: Chapter 179 after "The board of county commissioners" deleted "or the department of commerce, when examining the treasurer's report"; and made minor changes in style. Amendment effective July 1, 1995.

Cross-References

Board of Examiners — allocation, 2-15-1007.

County Commissioners — supervision of county and other officers, 7-4-2110.

Office of County Treasurer, 7-4-3002.

7-21-2115. Liability of county treasurer for licensing violations. Upon the notification of the treasurer as provided in 7-21-2114, the treasurer shall be personally liable for such license or increase unless he promptly proceeds under 7-21-2104 or 7-21-2116 to collect the same.

History: En. Sec. 4044, Pol. C. 1895; amd. Sec. 1, Ch. 92, L. 1903; amd. Sec. 1, Ch. 122, L. 1907; re-en. Sec. 2750, Rev. C. 1907; re-en. Sec. 2414, R.C.M. 1921; Cal. Pol. C. Sec. 3360; re-en. Sec. 2414, R.C.M. 1935; R.C.M. 1947, 84-2703(part).

Cross-References

Office of County Treasurer, 7-4-3002.

7-21-2116. Enforcement of licensing requirements. (1) The county treasurer must direct suit in the name of the state of Montana as plaintiff to be brought for the recovery of the license tax, against any person required to take out a license who fails, neglects, or refuses to take out such license or who carries on or attempts to carry on business without such license. In such case, either the treasurer or the county attorney must make the necessary affidavit for the writ of attachment and such writ of attachment may issue without any bonds being given on behalf of the plaintiff.

(2) In case of a recovery by the plaintiff, $15 damages must be added to the judgment and costs to be collected from the defendant.

History: En. Sec. 4044, Pol. C. 1895; amd. Sec. 1, Ch. 92, L. 1903; amd. Sec. 1, Ch. 122, L. 1907; re-en. Sec. 2750, Rev. C. 1907; re-en. Sec. 2414, R.C.M. 1921; Cal. Pol. C. Sec. 3360; re-en. Sec. 2414, R.C.M. 1935; R.C.M. 1947, 84-2703(part).

Cross-References

County Attorney — actions to recover money, 7-4-2713.

Office of County Treasurer, 7-4-3002.

Prejudgment attachment, Title 27, ch. 18.

7-21-2117. Defenses in actions related to licensing violations. Upon the trial of any action authorized by this part, the defendant is deemed not to have procured the proper license unless he either produces it or proves that he did procure it, but he may plead in bar of the action a recovery against him and the payment by him in a civil action of the proper license tax, together with damages and costs.

History: En. Sec. 4046, Pol. C. 1895; re-en. Sec. 2752, Rev. C. 1907; re-en. Sec. 2416, R.C.M. 1921; Cal. Pol. C. Sec. 3362; re-en. Sec. 2416, R.C.M. 1935; R.C.M. 1947, 84-2705.

7-21-2118 and 7-21-2119 reserved.

7-21-2120. Regulation of pawnbrokers — definition. (1) The board of county commissioners may, by the adoption of an ordinance that substantially complies with the provisions of 7-5-103 through 7-5-107, regulate the activities of pawnbrokers located outside the boundaries of an incorporated city or town. The regulations may include but are not limited to:

(a) standards for recordkeeping for all pawns, purchases, and sales;

(b) a provision for a waiting period to allow investigators time to examine merchandise;

(c) required forms of identification needed by persons pledging or selling articles; and

(d) penalty provisions for pawnbrokers who fail to comply with the regulations.

(2) For the purpose of this section, "pawnbroker" means a person engaged in conducting or carrying on the business of loaning money for himself or for another, upon personal property, personal security, pawns, or pledges, or

engaged in the business of purchasing articles of personal property and reselling or agreeing to resell the articles to the vendors or their assigns at prices agreed on at or before the time of purchase.

History: En. Sec. 1, Ch. 526, L. 1989.

Cross-References

Authority to require records for pawnbrokers and secondhand and junk shops, 7-21-4207.

Regulation of purchases from minors by pawnbrokers and secondhand and junk shops, 7-21-4208.

Pawnbrokers, Title 31, ch. 1, part 4.

Part 22

Miscellaneous Licenses (Repealed. Sec. 1, Ch. 533, L. 1989)

Part Compiler's Comments

Histories of Repealed Sections:

7-21-2201. En. Subd. 17, Sec. 1, Ch. 100, L. 1931; re-en. Sec. 4465.16, R.C.M. 1935; R.C.M. 1947, 16-1019(part).

7-21-2202. En. Sec. 655, Pol. C. 1895; re-en. Sec. 1637, Rev. C. 1907; re-en. Sec. 2429, R.C.M. 1921; re-en. Sec. 2429, R.C.M. 1935; R.C.M. 1947, 84-3101.

7-21-2203 through 7-21-2210. En. Sec. 1, Ch. 117, L. 1903; re-en. Sec. 2758, Rev. C. 1907; re-en. Sec. 2434, R.C.M. 1921; Cal. Pol. C. Sec. 3380; amd. Sec. 1, Ch. 44, L. 1935; re-en. Sec. 2434, R.C.M. 1935; amd. Sec. 1, Ch. 94, L. 1945; amd. Sec. 1, Ch. 74, L. 1949; amd. Sec. 1, Ch. 66, L. 1953; R.C.M. 1947, 84-3201(part).

7-21-2211. En. Sec. 1, Ch. 22, L. 1907; Sec. 2763, Rev. C. 1907; amd. Sec. 1, Ch. 100, L. 1917; re-en. Sec. 2435, R.C.M. 1921; amd. Sec. 5, Ch. 28, Ex. L. 1933; re-en. Sec. 2435, R.C.M. 1935; R.C.M. 1947, 84-3202; amd. Sec. 3, Ch. 249, L. 1979.

7-21-2212. En. Sec. 3, p. 199, L. 1897; re-en. Sec. 2770, Rev. C. 1907; amd. Sec. 1, Ch. 26, L. 1921; re-en. Sec. 2436, R.C.M. 1921; re-en. Sec. 2436, R.C.M. 1935; R.C.M. 1947, 84-3203.

7-21-2213. En. Sec. 5, p. 200, L. 1897; re-en. Sec. 2779, Rev. C. 1907; re-en. Sec. 2442, R.C.M. 1921; re-en. Sec. 2442, R.C.M. 1935; R.C.M. 1947, 84-3208.

7-21-2214. En. Sec. 4077, Pol. C. 1895; re-en. Sec. 2775, Rev. C. 1907; re-en. Sec. 2438, R.C.M. 1921; re-en. Sec. 2438, R.C.M. 1935; amd. Sec. 1, Ch. 66, L. 1945; R.C.M. 1947, 84-3204.

7-21-2215. En. Sec. 4, p. 200, L. 1897; re-en. Sec. 2776, Rev. C. 1907; re-en. Sec. 2440, R.C.M. 1921; re-en. Sec. 2440, R.C.M. 1935; amd. Sec. 43, Ch. 535, L. 1975; R.C.M. 1947, 84-3206.

7-21-2216. En. Sec. 4082, Pol. C. 1895; re-en. Sec. 2778, Rev. C. 1907; re-en. Sec. 2441, R.C.M. 1921; re-en. Sec. 2441, R.C.M. 1935; R.C.M. 1947, 84-3207; rep. Sec. 1, Ch. 161, L. 1979.

Part 23

Licensing of Itinerant Vendors

Part Cross-References

Municipal regulation of certain activities, 7-21-4201.

Personal solicitation sales, Title 30, ch. 14, part 5.

7-21-2301. Definitions. (1) A "consumer" is one who uses and by using destroys the value of the article purchased.

(2) Within the meaning of this part, an "itinerant vendor" is any person engaged or employed in the business of retailing to consumers by going from consumer to consumer, either on the streets or to their places of residence or employment, and there soliciting, selling, or offering to sell or exhibiting for sale (by sample, by catalogue, or otherwise) or taking orders for future delivery of any goods, wares, or merchandise or for services to be performed in the future.

History: **En. Sec. 1, Ch. 184, L. 1925; re-en. Sec. 2429.16, R.C.M. 1935; R.C.M. 1947, 84-3102(part).**

7-21-2302. Scope of part. (1) This part shall in no way affect any person, firm, partnership, or corporation with a commercial rating who maintains a permanent place of business in Montana.

(2) Nothing contained in this part is intended to operate so as to impair, abridge, or interfere with the right of any incorporated municipality within this state to enact local laws or ordinances dealing with the subject of this part, provided that such municipality shall not impose any license fees in excess of twice the amount provided herein for county license fees.

(3) Nothing contained in this part is intended to operate so as to interfere with the power of the United States to regulate commerce between the states, as such power is defined by the supreme court of the United States.

History: **(1)En. Sec. 1, Ch. 184, L. 1925; re-en. Sec. 2429.16, R.C.M. 1935; Sec. 84-3102, R.C.M. 1947; (2), (3)En. Sec. 8, Ch. 184, L. 1925; re-en. Sec. 2429.23, R.C.M. 1935; Sec. 84-3109, R.C.M. 1947; R.C.M. 1947, 84-3102(part), 84-3109.**

Cross-References

Municipal regulation of certain activities, 7-21-4201.

7-21-2303. License required to do business as itinerant vendor — fee. For the purpose of defraying the expenses of regulation under this part, every itinerant vendor desiring to do business in any county of this state must, before commencing such business, pay to the county treasurer of such county the sum of $15 for a license to conduct such business for a period of 1 year from the date such license is issued.

History: **En. Sec. 2, Ch. 184, L. 1925; re-en. Sec. 2429.17, R.C.M. 1935; amd. Sec. 1, Ch. 109, L. 1937; R.C.M. 1947, 84-3103.**

Cross-References

Office of County Treasurer, 7-4-3002.

7-21-2304. Nontransferability of license. The license shall be nontransferable and shall have printed across the face thereof in bold type the words “not transferable”.

History: **En. Sec. 5, Ch. 184, L. 1925; re-en. Sec. 2429.20, R.C.M. 1935; R.C.M. 1947, 84-3106(part).**

7-21-2305. Application for itinerant vendor license. (1) Every itinerant vendor desiring to do business in any county of this state must, before commencing such business, file with the county treasurer of such county, on a form to be provided by such treasurer, an application in writing, subscribed and sworn to by such applicant before an officer in this state authorized to take oaths.

(2) The application shall set forth:

(a) name of applicant;

(b) his place of permanent residence;

(c) his local headquarters, if any;

(d) time of his arrival in the county;

(e) county from which last license, if any, received;

(f) whether acting as principal, agent, or employee;

(g) if acting as agent or employee, the name and place of business of his principal or employer;

(h) brief descriptive list of articles to be offered for sale or services to be performed;

(i) whether payments or deposits of money are collected when orders are taken or in advance of final delivery.

(3) If the applicant is acting as an agent, the principal's acknowledgment of such agency must accompany the application as part of the application.

(4) At the time of filing the application, such itinerant vendor must accompany the application with the sum specified in 7-21-2303 as a license fee.

History: En. Sec. 3, Ch. 184, L. 1925; re-en. Sec. 2429.18, R.C.M. 1935; R.C.M. 1947, 84-3104.

Cross-References

Officers who may administer oaths, 1-6-101.

Office of County Treasurer, 7-4-3002.

7-21-2306. Bond required if deposit taken on orders for future delivery. (1) Every application made by an itinerant vendor taking orders for future delivery and collecting advance payments, deposits, or guarantees thereon under the terms of 7-21-2301 through 7-21-2305 shall be accompanied by a bond in the sum of $250 to said county treasurer.

(2) (a) The bond shall be executed by a surety company licensed to do business in this state or by two responsible freeholders residing in the county and whose names appear upon the assessment roll of said county.

(b) In lieu of a bond meeting the requirements of subsection (2)(a), the application may be accompanied by a cash bond of equal amount.

(3) The bond shall be approved by said county treasurer and conditioned upon making of final delivery of the goods ordered or the services to be rendered in accordance with the terms of such order or, failing therein, that the money advanced by his customers be refunded.

(4) Such bond shall remain in full force and effect for a period of 6 months after the expiration of any such license and shall be held to assure only business transacted under the authority of the license issued pursuant to the application which such bond accompanied.

History: En. Sec. 4, Ch. 184, L. 1925; re-en. Sec. 2429.19, R.C.M. 1935; R.C.M. 1947, 84-3105(part); amd. Sec. 14, Ch. 220, L. 1985.

Cross-References

Office of County Treasurer, 7-4-3002.

Guaranty — general provisions, Title 28, ch. 11, part 1.

Suretyship, Title 28, ch. 11, part 4.

7-21-2307. Right of aggrieved purchaser. Any person aggrieved by the action or misrepresentation of any such itinerant vendor shall have a right of action on the bond for the recovery of his money advanced or damages and costs.

History: En. Sec. 4, Ch. 184, L. 1925; re-en. Sec. 2429.19, R.C.M. 1935; R.C.M. 1947, 84-3105(part).

7-21-2308. Processing of application — issuance of license. (1) Upon filing of the application prescribed in 7-21-2305 or the filing of such application and the bond prescribed in 7-21-2306, in proper form, and upon the payment to the county treasurer of the sum required by 7-21-2303, the county treasurer shall issue and deliver to the applicant a license to carry on the business described in such application in the county in which such license is so issued for a period of 90 days from the date of such license.

(2) The county treasurer shall endorse upon each application the date of issuance of the license and shall immediately file such application with the county clerk and recorder of his county. The county clerk and recorder shall file the same in his office and keep an appropriate index thereof which shall show the date filed, the name of the applicant, and an appropriate reference to the file number by which said application may be found.

History: En. Sec. 5, Ch. 184, L. 1925; re-en. Sec. 2429.20, R.C.M. 1935; R.C.M. 1947, 84-3106(part).

Cross-References

Role and duties of County Clerk, 7-4-2611.

Office of County Treasurer, 7-4-3002.

7-21-2309. License to be displayed upon demand. (1) Every such itinerant vendor doing business under the provisions of this part must upon demand of any person exhibit his license and permit the same to then and there be read by the person making such demand.

(2) Any such itinerant vendor who shall willfully refuse or fail to exhibit his license as above provided is guilty of a misdemeanor and shall be fined not less than $100 or more than $250 for each offense.

History: En. Sec. 6, Ch. 184, L. 1925; re-en. Sec. 2429.21, R.C.M. 1935; amd. Sec. 2, Ch. 109, L. 1937; R.C.M. 1947, 84-3107.

Cross-References

Classification of offenses, 45-1-201.

Misdemeanor defined, 45-2-101.

7-21-2310. Effect of failure to comply with licensing requirements. Every itinerant vendor, as herein defined, doing business without first obtaining a license as required by this part is guilty of a misdemeanor and shall be punished accordingly.

History: En. Sec. 7, Ch. 184, L. 1925; re-en. Sec. 2429.22, R.C.M. 1935; R.C.M. 1947, 84-3108.

Cross-References

Classification of offenses, 45-1-201.

Misdemeanor defined, 45-2-101.

Misdemeanor — no penalty specified, 46-18-212.

Part 24

Licensing of Transient Retail Merchants

Part Cross-References

Municipal regulation of certain activities, 7-21-4201.

7-21-2401. Definitions. As used in this part, unless the context indicates otherwise, the following definitions apply:

(1) "Temporary premises" means any hotel, roominghouse, storeroom, building or part of any building, tent, vacant lot, freight station, railroad car, automobile, truck, trailer or trailer house, or public or quasi-public place, temporarily occupied for such business as described in subsection (2).

(2) "Transient retail merchant" means every person, firm, or corporation acting for himself or itself or representing any other person, firm, or corporation who or which brings into temporary premises a stock of goods, wares, articles of merchandise, notions, or other articles of trade and who or which

solicits, sells, offers to sell, or exhibits for sale such stock of goods, wares, articles of merchandise, notions, or other articles of trade at retail.

History: En. Sec. 1, Ch. 182, L. 1925; re-en. Sec. 2429.1, R.C.M. 1935; amd. Sec. 1, Ch. 113, L. 1951; R.C.M. 1947, 84-3701(part); amd. Sec. 4, Ch. 249, L. 1979.

7-21-2402. Applicability of term transient retail merchant. The definition of transient retail merchant shall continue to apply until such person, firm, or corporation shall be continuously engaged at such particular place in the county for a period of 1 year.

History: En. Sec. 1, Ch. 182, L. 1925; re-en. Sec. 2429.1, R.C.M. 1935; amd. Sec. 1, Ch. 113, L. 1951; R.C.M. 1947, 84-3701(part).

7-21-2403. Scope of part. (1) Nothing contained in this part is intended to operate so as to impair, abridge, or interfere with the right of any incorporated municipality within this state to enact local laws or ordinances dealing with the subject of this part.

(2) The provisions of this part shall not apply to duly constituted city markets operated by authority of any city or town.

(3) Nothing contained in this part is intended to operate so as to interfere with the power of the United States to regulate commerce between the states, as such power is defined by the supreme court of the United States.

History: En. Sec. 8, Ch. 182, L. 1925; re-en. Sec. 2429.8, R.C.M. 1935; R.C.M. 1947, 84-3708.

Cross-References

Municipal regulation of certain activities, 7-21-4201.

7-21-2404. License required to do business as transient retail merchant — fee. The amount to be paid for the license to conduct the business of a transient retail merchant shall be the sum of $5 for each week or fraction thereof, to be paid in advance to the county treasurer of the county in which such business is conducted.

History: En. Sec. 2, Ch. 182, L. 1925; re-en. Sec. 2429.2, R.C.M. 1935; R.C.M. 1947, 84-3702.

Cross-References

Office of County Treasurer, 7-4-3002.

7-21-2405. Nontransferability of license. Such license shall be nontransferable and shall have printed across the face thereof in bold type the words "Not Transferable".

History: En. Sec. 5, Ch. 182, L. 1925; re-en. Sec. 2429.5, R.C.M. 1935; R.C.M. 1947, 84-3705(part).

7-21-2406. Application for transient retail merchant license. (1) Every transient retail merchant desiring to do business in any county of this state must, before commencing such business, file with the county treasurer of such county, on a form to be provided by such treasurer, an application in writing, subscribed and sworn to by such applicant before an officer in this state authorized to take oaths.

(2) The application shall set forth:

(a) name of applicant;

(b) his place of permanent residence;

(c) his local headquarters, if any;

(d) time of his arrival in the county;

(e) county from which last license, if any, received;

(f) whether acting as principal, agent, or employee;

(g) if acting as agent or employee, the name and place of business of his principal or employer;

(h) brief descriptive list of articles to be offered for sale or services to be performed;

(i) whether payments or deposits of money are collected when orders are taken or in advance of final delivery;

(j) the number of weeks for which license is requested.

(3) If the applicant is acting as an agent, the principal's acknowledgment of such agency must accompany the application as part of the application.

(4) At the time of filing the application, such transient retail merchant must accompany the application with the sum specified in 7-21-2404 as a license fee, except as provided in 7-21-2407.

History: En. Sec. 3, Ch. 182, L. 1925; re-en. Sec. 2429.3, R.C.M. 1935; R.C.M. 1947, 84-3703.

Cross-References

Officers who may administer oaths, 1-6-101.

Office of County Treasurer, 7-4-3002.

Agency, Title 28, ch. 10.

7-21-2407. Bond in lieu of license fee. (1) In lieu of the license fee prescribed in 7-21-2404, every transient retail merchant who files with the application required in 7-21-2406 an affidavit indicating bona fide intention to become a permanent merchant and continue in business for a period longer than 1 year shall, upon filing and approval of the bond provided for in this section, receive from the county treasurer a license permitting the conduct of such business for a period of 1 year.

(2) Such bond shall be a surety bond in the sum of $1,000 to said county treasurer.

(3) (a) The bond shall be executed by a surety company licensed to do business in this state or by two responsible freeholders residing in the county and whose names appear upon the assessment roll of said county.

(b) In lieu of a bond meeting the requirements of subsection (3)(a), the bond may be a cash bond of equal amount.

(4) The bond shall be approved by said county treasurer and conditioned upon the performance of the intention to become a permanent merchant and continue in business for a period longer than 1 year and to insure the payment of license fees for the period such business is actually conducted if not in fact a bona fide permanent business. The bond shall be further conditioned upon the delivery of goods ordered or sold in accordance with the terms of such order or sale.

(5) Such bond shall remain in full force and effect for a period of 6 months after the expiration of the 1-year period.

History: En. Sec. 4, Ch. 182, L. 1925; re-en. Sec. 2429.4, R.C.M. 1935; R.C.M. 1947, 84-3704(part); amd. Sec. 15, Ch. 220, L. 1985.

Cross-References

Office of County Treasurer, 7-4-3002.

Guaranty — general provisions, Title 28, ch. 11, part 1.

Suretyship, Title 28, ch. 11, part 4.

7-21-2408. Right of aggrieved purchaser. Any person aggrieved by any action or misrepresentation of any such transient retail merchant shall have a right of action on the bond provided for in 7-21-2407 for the recovery of his money advanced or damages and costs.

History: En. Sec. 4, Ch. 182, L. 1925; re-en. Sec. 2429.4, R.C.M. 1935; R.C.M. 1947, 84-3704(part).

Cross-References

When guarantor of performance or payment becomes liable, 28-11-205.

Extent of surety's liability, 28-11-411.

7-21-2409. Processing of application — issuance of license. (1) (a) Upon filing of the application prescribed in 7-21-2406 and the payment of the fee prescribed in 7-21-2404, the county treasurer shall issue and deliver to the applicant, in the county, a license to carry on the business described in such application in the county in which such license is so issued for the period for which such license is requested.

(b) Upon filing of the application prescribed in 7-21-2406 and the bond prescribed in 7-21-2407, the county treasurer shall issue and deliver to the applicant a license to carry on the business described in such application in the county in which such license is so issued for a period of 1 year from the date of such license.

(2) The county treasurer shall endorse upon each application the date of issuance of the license and the duration thereof and shall immediately file such application with the county clerk and recorder of his county. The county clerk and recorder shall file the same in his office and keep an appropriate index thereof which shall show the date filed, the name of applicant, and an appropriate reference to the file number by which said application may be found.

History: En. Sec. 5, Ch. 182, L. 1925; re-en. Sec. 2429.5, R.C.M. 1935; R.C.M. 1947, 84-3705(part).

Cross-References

Role and duties of County Clerk, 7-4-2611.

Office of County Treasurer, 7-4-3002.

7-21-2410. License to be displayed in place of business. (1) Every transient retail merchant doing business under the provisions of this part shall at all times keep said license conspicuously posted in said place of business.

(2) Any such transient retail merchant who shall fail to post and keep posted his license as provided above is guilty of a misdemeanor and shall be fined not less than $10 or more than $25 for each offense.

History: En. Sec. 6, Ch. 182, L. 1925; re-en. Sec. 2429.6, R.C.M. 1935; R.C.M. 1947, 84-3706.

Cross-References

Classification of offenses, 45-1-201.

Misdemeanor defined, 45-2-101.

7-21-2411. Effect of failure to comply with licensing requirements. Every transient retail merchant, as herein defined, doing business without first obtaining a license so required by this part is guilty of a misdemeanor and shall be punished accordingly.

History: En. Sec. 7, Ch. 182, L. 1925; re-en. Sec. 2429.7, R.C.M. 1935; R.C.M. 1947, 84-3707.

Cross-References

Classification of offenses, 45-1-201.

Misdemeanor defined, 45-2-101.

Misdemeanor — no penalty specified, 46-18-212.

Part 25
Licensing of Hucksters

Part Cross-References

Municipal regulation of certain activities, 7-21-4201.

Personal solicitation sales, Title 30, ch. 14, part 5.

7-21-2501. Definition of term huckster. Within the meaning of this part, any person engaged or employed in the business of buying and selling farm products who disposes of such products by selling them at retail to consumers by going from house to house is a huckster.

History: En. Sec. 1, Ch. 183, L. 1925; re-en. Sec. 2429.9, R.C.M. 1935; R.C.M. 1947, 84-2901.

Cross-References

Personal solicitation defined, 30-14-502.

7-21-2502. Scope of part. (1) Nothing contained in this part is intended to operate so as to impair, abridge, or interfere with the right of any incorporated municipality within this state to enact local laws or ordinances dealing with the subject of this part.

(2) Nothing in this part shall be construed so as in any manner to impair, abridge, or interfere with the right of a grower or producer of farm products to dispose of such products grown or produced by him.

History: En. Sec. 7, Ch. 183, L. 1925; re-en. Sec. 2429.15, R.C.M. 1935; R.C.M. 1947, 84-2907.

Cross-References

Municipal regulation of certain activities, 7-21-4201.

7-21-2503. License required to do business as huckster — fee. Every huckster desiring to do business in any county of this state must, before commencing such business, pay to the county treasurer of such county the sum of $15 for a license to conduct such business for a period of 6 months from the date such license is issued.

History: En. Sec. 2, Ch. 183, L. 1925; re-en. Sec. 2429.10, R.C.M. 1935; amd. Sec. 1, Ch. 124, L. 1937; R.C.M. 1947, 84-2902.

Cross-References

Municipal regulation of certain activities, 7-21-4201.

7-21-2504. Nontransferability of license. The license required by 7-21-2503 shall be nontransferable and shall have printed across the face thereof in bold type the words “not transferable”.

History: En. Sec. 4, Ch. 183, L. 1925; re-en. Sec. 2429.12, R.C.M. 1935; R.C.M. 1947, 84-2904(part).

7-21-2505. Application for huckster license. (1) Every huckster desiring to do business in any county of this state must, before commencing such business, file with the county treasurer of such county, on a form to be provided by such treasurer, an application in writing.

(2) The application shall set forth:

(a) name of applicant;
(b) his place of permanent residence;
(c) whether acting as principal, agent, or employee;

(d) if acting as agent or employee, the name and place of business of his principal or employer.

(3) At the time of filing the application, such huckster must accompany the application with the sum specified in 7-21-2503 as a license fee.

History: En. Sec. 3, Ch. 183, L. 1925; re-en. Sec. 2429.11, R.C.M. 1935; R.C.M. 1947, 84-2903.

Cross-References

Office of County Treasurer, 7-4-3002.

7-21-2506. Processing of application — issuance of license. (1) Upon filing of the application specified in 7-21-2505 and upon the payment to the county treasurer of the sum specified in 7-21-2503, the county treasurer shall issue and deliver to the applicant a license to carry on the business of a huckster for a period of 6 months from the date of such license.

(2) The county treasurer shall endorse upon each application the date of issuance of the license and shall immediately file such application with the county clerk and recorder of his county. The county clerk and recorder shall file the same in his office and keep an appropriate index thereof which shall show the date filed, the name of the applicant, and an appropriate reference to the file number by which said application may be found.

History: En. Sec. 4, Ch. 183, L. 1925; re-en. Sec. 2429.12, R.C.M. 1935; R.C.M. 1947, 84-2904(part).

Cross-References

Role and duties of County Clerk, 7-4-2611.

Office of County Treasurer, 7-4-3002.

7-21-2507. License to be displayed upon demand. (1) Every such huckster doing business under the provisions of this part must, upon demand of any interested person, exhibit his license and permit the same to then and there be read by the person making such demand.

(2) Any such huckster who shall refuse or fail to exhibit his license as provided above is guilty of a misdemeanor and shall be fined not less than $10 or more than $25.

History: En. Sec. 5, Ch. 183, L. 1925; re-en. Sec. 2429.13, R.C.M. 1935; R.C.M. 1947, 84-2905.

Cross-References

Classification of offenses, 45-1-201.

Misdemeanor defined, 45-2-101.

7-21-2508. Effect of failure to comply with licensing requirements. Every huckster, as herein defined, doing business without first obtaining a license as required by this part is guilty of a misdemeanor and shall be punished accordingly, as provided in 46-18-212.

History: En. Sec. 6, Ch. 183, L. 1925; re-en. Sec. 2429.14, R.C.M. 1935; R.C.M. 1947, 84-2906.

Cross-References

Classification of offenses, 45-1-201.

Misdemeanor defined, 45-2-101.

Part 26

Licensing of Public Dances and Dancehalls (Repealed. Sec. 1, Ch. 533, L. 1989)

Part Compiler's Comments

Histories of Repealed Sections:

7-21-2601. En. Sec. 1, Ch. 131, L. 1929; re-en. Sec. 2815.1, R.C.M. 1935; R.C.M. 1947, 16-1166.

7-21-2602. En. Sec. 2, Ch. 131, L. 1929; re-en. Sec. 2815.2, R.C.M. 1935; R.C.M. 1947, 16-1167(part).

7-21-2603. En. Sec. 3, Ch. 131, L. 1929; re-en. Sec. 2815.3, R.C.M. 1935; R.C.M. 1947, 16-1168(part).

7-21-2604. En. Sec. 3, Ch. 131, L. 1929; re-en. Sec. 2815.3, R.C.M. 1935; R.C.M. 1947, 16-1168(part).

7-21-2605. En. Sec. 6, Ch. 131, L. 1929; re-en. Sec. 2815.6, R.C.M. 1935; R.C.M. 1947, 16-1171(part).

7-21-2606. En. Sec. 6, Ch. 131, L. 1929; re-en. Sec. 2815.6, R.C.M. 1935; R.C.M. 1947, 16-1171(part).

7-21-2607. En. Sec. 5, Ch. 131, L. 1929; re-en. Sec. 2815.5, R.C.M. 1935; R.C.M. 1947, 16-1170(part).

7-21-2608. En. Sec. 7, Ch. 131, L. 1929; re-en. Sec. 2815.7, R.C.M. 1935; R.C.M. 1947, 16-1172.

7-21-2609. En. Sec. 2, Ch. 131, L. 1929; re-en. Sec. 2815.2, R.C.M. 1935; R.C.M. 1947, 16-1167(part).

7-21-2610. En. Sec. 6, Ch. 131, L. 1929; re-en. Sec. 2815.6, R.C.M. 1935; R.C.M. 1947, 16-1171(part).

7-21-2611. En. Sec. 4, Ch. 131, L. 1929; re-en. Sec. 2815.4, R.C.M. 1935; R.C.M. 1947, 16-1169(part).

7-21-2612. En. Sec. 4, Ch. 131, L. 1929; re-en. Sec. 2815.4, R.C.M. 1935; R.C.M. 1947, 16-1169(part).

7-21-2613. En. Sec. 5, Ch. 131, L. 1929; re-en. Sec. 2815.5, R.C.M. 1935; R.C.M. 1947, 16-1170(part).

7-21-2614. (1)En. Sec. 8, Ch. 131, L. 1929; re-en. Sec. 2815.8, R.C.M. 1935; Sec. 16-1173, R.C.M. 1947; (2)En. Sec. 5, Ch. 131, L. 1929; re-en. Sec. 2815.5, R.C.M. 1935; Sec. 16-1170, R.C.M. 1947; R.C.M. 1947, 16-1170(part), 16-1173.

7-21-2615. En. Sec. 9, Ch. 131, L. 1929; re-en. Sec. 2815.9, R.C.M. 1935; R.C.M. 1947, 16-1174.

Parts 27 through 30 reserved

Part 31

Public Scales

Part Cross-References

Weights, measures, standards, and labeling, Title 30, ch. 12.

7-21-3101. Establishment of public scales. When petitioned by 25 or more residents and freeholders of the county, the board of county commissioners of any county is hereby authorized in its discretion to establish and locate public scales at any suitable location selected by the county commissioners within the county.

History: En. Sec. 1, Ch. 22, L. 1905; re-en. Sec. 2899, Rev. C. 1907; re-en. Sec. 4471, R.C.M. 1921; re-en. Sec. 4471, R.C.M. 1935; R.C.M. 1947, 16-1108.

Cross-References

General authority of County Commissioners, 7-5-2101.

Licensing of weighing devices, 30-12-203.

7-21-3102. Ownership of public scales. Such scales shall be purchased by the county, shall be the property of the county, and at all times shall be under its control and subject to the will of the county commissioners.

History: En. Sec. 2, Ch. 22, L. 1905; re-en. Sec. 2900, Rev. C. 1907; re-en. Sec. 4472, R.C.M. 1921; re-en. Sec. 4472, R.C.M. 1935; R.C.M. 1947, 16-1109(part).

Cross-References

General authority of County Commissioners, 7-5-2101.

Authorization for county to obtain property, 7-8-2201.

7-21-3103. Capacity and design of public scales. Such scales shall be of not less than 5 tons' weighing capacity and shall be provided with glass or open front which can be observed by the one weighing without dismounting from wagon.

History: En. Sec. 2, Ch. 22, L. 1905; re-en. Sec. 2900, Rev. C. 1907; re-en. Sec. 4472, R.C.M. 1921; re-en. Sec. 4472, R.C.M. 1935; R.C.M. 1947, 16-1109(part).

7-21-3104. Appointment of public weigher. (1) The board of county commissioners shall appoint, at each place where public scales are established by them, a public weigher who shall have the custody and care of such property.

(2) Such public weigher shall be governed by such rules as may be from time to time prescribed or adopted by the board, and he may be removed at any time by such board.

History: (1)En. Sec. 3, Ch. 22, L. 1905; re-en. Sec. 2901, Rev. C. 1907; re-en. Sec. 4473, R.C.M. 1921; re-en. Sec. 4473, R.C.M. 1935; Sec. 16-1110, R.C.M. 1947; (2)En. Sec. 5, Ch. 22, L. 1905; re-en. Sec. 2903, Rev. C. 1907; re-en. Sec. 4475, R.C.M. 1921; re-en. Sec. 4475, R.C.M. 1935; Sec. 16-1112, R.C.M. 1947; R.C.M. 1947, 16-1110(part), 16-1112(part).

Cross-References

General authority of County Commissioners, 7-5-2101.

County Commissioners — promulgation and enforcement of rules, 7-5-2102.

Employment of personnel by County Commissioners, 7-5-2107.

7-21-3105. Bond of public weigher. A public weigher appointed pursuant to 7-21-3104 shall give a bond to the county in the sum of $500, conditioned for the safekeeping of the public scales and for the faithful and impartial discharge of the duties incident to his trust in office.

History: En. Sec. 3, Ch. 22, L. 1905; re-en. Sec. 2901, Rev. C. 1907; re-en. Sec. 4473, R.C.M. 1921; re-en. Sec. 4473, R.C.M. 1935; R.C.M. 1947, 16-1110(part).

Cross-References

Official bonds of county officers, 7-4-2212.

7-21-3106. Record of weighing. (1) It shall be the duty of each public weigher to keep a stub record of all weighing done by him. The record and the receipt issued by such public weigher shall show for whom property was weighed and the character and kind thereof and shall constitute prima facie evidence of the facts therein contained.

(2) All such stub records or other records which the county commissioners may require him to keep shall at all times be open to public inspection during business hours, between 7 a.m. and 6 p.m. of any day, except Sundays and legal holidays.

(3) Such public weigher shall file a sworn statement with the county recorder of the county, as prescribed by the county commissioners thereof. The statement shall show the date and character or kind of property weighed, for whom weighed, and a complete statement of all fees collected.

History: En. Sec. 4, Ch. 22, L. 1905; re-en. Sec. 2902, Rev. C. 1907; re-en. Sec. 4474, R.C.M. 1921; re-en. Sec. 4474, R.C.M. 1935; R.C.M. 1947, 16-1111.

Cross-References

Right to know, Art. II, sec. 9, Mont. Const.

Citizens entitled to inspect and copy public writings, 2-6-102.

7-21-3107. Fee for weighing. Such public weigher shall receive not to exceed 10 cents for each receipt issued by him.

History: En. Sec. 5, Ch. 22, L. 1905; re-en. Sec. 2903, Rev. C. 1907; re-en. Sec. 4475, R.C.M. 1921; re-en. Sec. 4475, R.C.M. 1935; R.C.M. 1947, 16-1112(part).

7-21-3108. Misconduct by public weigher. Any public weigher under the provisions of this part who shall make any false or fraudulent receipt of any weighing done by him or shall be guilty of any collusion with any other person or persons for the purpose of deceiving any person or persons in regard to the correctness of weights or who shall fail to comply with the requirements of 7-21-3104(2) or 7-21-3107 is guilty of a misdemeanor.

History: En. Sec. 6, Ch. 22, L. 1905; re-en. Sec. 2904, Rev. C. 1907; re-en. Sec. 4476, R.C.M. 1921; re-en. Sec. 4476, R.C.M. 1935; R.C.M. 1947, 16-1113.

Cross-References

What constitutes actual fraud, 28-2-405.

What constitutes constructive fraud, 28-2-406.

Classification of offenses, 45-1-201.

Misdemeanor defined, 45-2-101.

Deceptive business practices, 45-6-318.

False swearing, 45-7-202.

Official misconduct, 45-7-401.

Misdemeanor — no penalty specified, 46-18-212.

Part 32

County Agricultural and Livestock Services

Part Cross-References

Agriculture, Title 80.

Livestock, Title 81.

7-21-3201. Authorization to appropriate money for promotion of county products. (1) The board of county commissioners of any county may appropriate money from the general fund of the county for advertising the agricultural resources of the county through the department of agriculture or for assisting the department of agriculture in presenting exhibits of Montana products at fairs or expositions outside the state.

(2) Said money shall be expended in such manner as the board may direct or may be transmitted to the department of agriculture, when such appropriation is for the purpose of assisting said department in advertising the resources or presenting the exhibits herein indicated.

History: (1)En. Sec. 1, Ch. 107, L. 1927; re-en. Sec. 4470.1, R.C.M. 1935; amd. Sec. 116, Ch. 218, L. 1974; Sec. 16-1105, R.C.M. 1947; (2)En. Sec. 2, Ch. 107, L. 1927; re-en. Sec. 4470.2, R.C.M. 1935; Sec. 16-1106, R.C.M. 1947; R.C.M. 1947, 16-1105, 16-1106(part).

Cross-References

Duties of Department of Agriculture, 80-1-102.

7-21-3202. Limitation on appropriation to promote county products. The appropriation authorized by 7-21-3201 shall not exceed in any one year the following amounts:

(1) in counties of the first class or second class, $1,000;

(2) in counties of the third class, $500;

(3) in all other counties, $250.

History: En. Sec. 2, Ch. 107, L. 1927; re-en. Sec. 4470.2, R.C.M. 1935; R.C.M. 1947, 16-1106(part).

Cross-References

Classification of counties, 7-1-2111.

7-21-3203. Support of extension work in agriculture and home economics. (1) The county commissioners of any county may appropriate money from the general funds of the county treasury or from funds provided by special levy, which the county commissioners are hereby authorized to make at the same time as other levies for county purposes, for the purpose of carrying on extension work in agriculture and home economics within the county in cooperation with Montana state university and the United States department of agriculture.

(2) The amount of such appropriation in any county, its method of expenditure, the responsibility for the direction of the work, and the procedure of appointing agents and the compensation and conditions of service of such agents shall be covered in memoranda of agreement between the county commissioners and Montana state university.

History: En. Sec. 1, Ch. 109, L. 1913; amd. Sec. 1, Ch. 54, L. 1915; amd. Sec. 1, Ch. 13, L. 1919; re-en. Sec. 4487, R.C.M. 1921; re-en. Sec. 4487, R.C.M. 1935; amd. Sec. 1, Ch. 204, L. 1949; R.C.M. 1947, 16-1130.

Cross-References

General authority of County Commissioners, 7-5-2101.

Authorization for county mill levy, 7-6-2501.

Montana State University — designation and purpose, 20-25-221.

7-21-3204 through 7-21-3210 reserved.

7-21-3211. Employment of stock inspector. (1) Whenever the board of county commissioners is satisfied, from its own knowledge or from facts and circumstances submitted to it by the county attorney or sheriff, that livestock is being stolen, slaughtered, or otherwise disposed of contrary to law in such county and in such manner that the public officers of the county are not in position to apprehend the criminals or obtain the necessary evidence upon which to base a prosecution, the board of each county, except in counties of the first class, has the power to employ a stock inspector.

(2) Whenever such a stock inspector is so employed, the employment shall be only for the case or cases then under investigation. During the existence of such appointment, he shall be vested with the same police power and authority as the sheriff, within the limitation of the purposes for which he is appointed.

History: En. Sec. 2, Ch. 61, L. 1909; re-en. Sec. 4484, R.C.M. 1921; re-en. Sec. 4484, R.C.M. 1935; R.C.M. 1947, 16-1124(part).

Cross-References

Employment of personnel by County Commissioners, 7-5-2107.

Department of Livestock — marks and brands, Title 81, ch. 3.

7-21-3212. Compensation of stock inspector. (1) Whenever such a stock inspector is so employed, his compensation shall be at the rate of not to exceed the sum of $7.50 per day and necessary expenses for the time actually engaged in such work, and he shall be paid by a warrant on the general fund of the county.

(2) Whenever a stock inspector is so employed in the investigation of a crime and a reward has been offered under 7-32-2301 for the apprehension and conviction of the party or parties guilty of such crime, such inspector shall not be entitled to any part of said reward.

History: **En. Sec. 2, Ch. 61, L. 1909; re-en. Sec. 4484, R.C.M. 1921; re-en. Sec. 4484, R.C.M. 1935; R.C.M. 1947, 16-1124(part).**

Cross-References

Employment of personnel by County Commissioners, 7-5-2107.

Details related to county warrants, 7-6-2601.

7-21-3213. Confidentiality of appointment of stock inspector. The proceedings and meetings of the board of county commissioners relating to the employment of a stock inspector shall not be made public until after the investigation of the crime or crimes by said inspector is completed, and any officer who divulges the name of the stock inspector employed or the purpose of his employment during such period shall be guilty of a misdemeanor.

History: **En. Sec. 3, Ch. 61, L. 1909; re-en. Sec. 4485, R.C.M. 1921; re-en. Sec. 4485, R.C.M. 1935; R.C.M. 1947, 16-1125.**

Cross-References

Right to know, Art. II, sec. 9, Mont. Const.

Open meetings, Title 2, ch. 3, part 2.

Classification of offenses, 45-1-201.

Misdemeanor defined, 45-2-101.

Misdemeanor — no penalty specified, 46-18-212.

Part 33
Public Markets

7-21-3301. Establishment of markets and market houses. In addition to the powers specifically granted by the laws of the state and such other limitations and exceptions contained in the existing statutes of the state in reference to the debt-incurring power of boards of county commissioners, the boards of county commissioners in every county in Montana shall have the power to erect market houses to be located at the county seats of their respective counties, to establish and regulate markets, and to acquire the property necessary therefor.

History: **En. Sec. 1, Ch. 28, L. 1917; re-en. Sec. 4488, R.C.M. 1921; re-en. Sec. 4488, R.C.M. 1935; R.C.M. 1947, 16-1136.**

Cross-References

County budget law, Title 7, ch. 6, part 23.

7-21-3302. Acquisition of property for establishment and maintenance of public markets. The boards of county commissioners within Montana may acquire by purchase, lease, construction, or otherwise suitable grounds, buildings, and quarters for the establishing, conducting, operating, and maintaining of a public market open to the farmers, gardeners, and actual producers of farm products within their respective counties.

History: **En. Sec. 2, Ch. 28, L. 1917; re-en. Sec. 4489, R.C.M. 1921; re-en. Sec. 4489, R.C.M. 1935; R.C.M. 1947, 16-1137(part).**

Cross-References

Authorization for county to obtain property, 7-8-2201.

7-21-3303. Opening of public market. The boards of county commissioners of the counties of the state availing themselves of the provisions of this part must, as soon as the lands and premises necessary therefor have been acquired, cause to be opened and maintained at the county seats of their respective counties and in the quarters so acquired an open public market for the benefit of the farmers, gardeners, and actual producers of farm products, for the sale by the producers thereof direct to the consumers of butter, eggs, cheese, meats, vegetables, and all other farm products raised or produced for domestic consumption, wherein the producers thereof within each county may display and offer for sale his or her products direct to the consumers thereof within said counties.

History: En. Sec. 2, Ch. 28, L. 1917; re-en. Sec. 4489, R.C.M. 1921; re-en. Sec. 4489, R.C.M. 1935; R.C.M. 1947, 16-1137(part).

Cross-References

General authority of County Commissioners, 7-5-2101.

7-21-3304. Days of operation of market. All county markets established under the provisions of this part shall be open to the public not less than 2 days in each week.

History: En. Sec. 5, Ch. 28, L. 1917; re-en. Sec. 4492, R.C.M. 1921; re-en. Sec. 4492, R.C.M. 1935; R.C.M. 1947, 16-1140(part).

7-21-3305. Notice of rules and days of operation. The rules adopted for the government of the county market, together with a notice of the market days in each week, shall be published by the county commissioners once in each year in every newspaper printed and published in their respective counties for a period of not less than 2 successive weeks, the first publication thereof to be made not less than 2 weeks prior to the opening of the markets established hereunder in each county and the future annual publications thereof to be made at such time as may be ordered by the boards of county commissioners.

History: En. Sec. 5, Ch. 28, L. 1917; re-en. Sec. 4492, R.C.M. 1921; re-en. Sec. 4492, R.C.M. 1935; R.C.M. 1947, 16-1140(part).

Cross-References

Promulgation and enforcement of rules, 7-5-2102.

County printing contract, 7-5-2411.

7-21-3306. Payment of expenses incurred in connection with public market. The expense of the establishment and maintenance of the markets provided for in this part shall be paid by the boards of county commissioners from the general funds of the counties, except such portions of the expense of operating and maintaining the same as may be derived from the revenues provided for in this part.

History: En. Sec. 6, Ch. 28, L. 1917; re-en. Sec. 4493, R.C.M. 1921; re-en. Sec. 4493, R.C.M. 1935; R.C.M. 1947, 16-1141.

Cross-References

Details related to county warrants, 7-6-2601.

7-21-3307. Gross proceeds charge. (1) Every producer of products availing himself or herself of the use of the marketplace established under the provisions of this part shall pay or cause to be paid, at the close of each day's business, to the market master thereof a charge of 5% of his or her gross sales.

(2) The funds thus collected by the market master shall be turned in to the county treasury to the credit of the county market fund and shall be used by the county treasurer toward the payment of the expenses of operating and maintaining such public market.

History: En. Sec. 4, Ch. 28, L. 1917; re-en. Sec. 4491, R.C.M. 1921; re-en. Sec. 4491, R.C.M. 1935; R.C.M. 1947, 16-1139(part).

Cross-References
Duties of County Treasurer, 7-6-2111.

7-21-3308. Effect of failure to pay gross proceeds charge. Every person, firm, or corporation availing themselves of the privileges provided hereby who shall fail, neglect, or refuse to so pay to the market master of the county market of any county of this state 5% of the gross sales made by them within such market shall be guilty of a misdemeanor and upon the conviction thereof shall be fined not less than $10 or more then $100 and imprisoned in the county jail until such fine be paid, in the manner provided by law, and shall be forever thereafter disbarred from the privileges afforded by the county markets established at the county seats of every county in Montana.

History: En. Sec. 4, Ch. 28, L. 1917; re-en. Sec. 4491, R.C.M. 1921; re-en. Sec. 4491, R.C.M. 1935; R.C.M. 1947, 16-1139(part).

Cross-References
Classification of offenses, 45-1-201.
Misdemeanor defined, 45-2-101.

7-21-3309. Speculative or resale purchases prohibited. No rules adopted for the government of any market established under this part shall permit any person, firm, or corporation to purchase the products displayed and offered for sale for the purpose of speculating thereon by again offering the same for sale within such public marketplace. The privileges of the markets established under the provisions of this part shall be extended only to the actual producers of the products offered for sale.

History: En. Sec. 7, Ch. 28, L. 1917; re-en. Sec. 4494, R.C.M. 1921; re-en. Sec. 4494, R.C.M. 1935; R.C.M. 1947, 16-1142.

Cross-References
Promulgation and enforcement of rules, 7-5-2102.

7-21-3310 through 7-21-3320 reserved.

7-21-3321. Market master. In each of the counties of this state wherein the office of county auditor exists, the county auditor shall be ex officio the county market master. In all other counties which may avail themselves of the provisions of this part wherein no office of county auditor is maintained, the county clerk of such county shall be ex officio market master.

History: En. Sec. 3, Ch. 28, L. 1917; re-en. Sec. 4490, R.C.M. 1921; re-en. Sec. 4490, R.C.M. 1935; R.C.M. 1947, 16-1138(part).

Cross-References
Role and duties of County Clerk, 7-4-2611.
Office of County Auditor, 7-4-3003.

7-21-3322. Role of market master. (1) Such market master shall, under the supervision and approval of the board of county commissioners, make all necessary rules for the establishment, maintenance, operation, and control of the markets established hereunder in the respective counties of the state.

(2) It shall be the duty of such market master:

(a) to cause the market buildings, grounds, and premises to be kept reasonably clean and in proper sanitary condition;

(b) to arrange for stalls and spaces in such manner as to best suit the convenience of both buyers and sellers;

(c) to see that the laws of Montana in reference to weights and measures are enforced and observed;

(d) to cause order to be preserved during the time such market shall be open and in operation;

(e) to prevent and remove obstructions from the marketplace or grounds;

(f) to remove all vagrants, prevent disorderly conduct, and prevent disorderly persons from loitering in said market buildings, space, or grounds during the market hours;

(g) to cause all offenses against the laws of Montana in relation to the inspection of foods or the sale of unclean, unwholesome, damaged, or spoiled meats, farm products, vegetables, or provisions of any kind to be prosecuted;

(h) to designate proper means of supervising and accounting for the sales therein made and collecting the commissions hereinafter provided for; and

(i) to generally supervise and control the operations of the public markets established under the provisions of this part.

History: En. Sec. 3, Ch. 28, L. 1917; re-en. Sec. 4490, R.C.M. 1921; re-en. Sec. 4490, R.C.M. 1935; R.C.M. 1947, 16-1138(part).

Cross-References

Promulgation and enforcement of rules, 7-5-2102.

Employment of personnel by County Commissioners, 7-5-2107.

Part 34
County Fairs

7-21-3401. Authorization to create county fair commission. The board of county commissioners may, at any regular meeting, appoint a county fair commission subject to the provisions of 7-1-201 through 7-1-203.

History: En. Sec. 1, Ch. 67, L. 1903, re-en. Sec. 2927, Rev. C. 1907; amd. Sec. 1, Ch. 131, L. 1917; amd. Sec. 1, Ch. 139, L. 1921; re-en. Sec. 4545, R.C.M. 1921; amd. Sec. 1, Ch. 30, L. 1927; amd. Sec. 1, Ch. 52, L. 1935; re-en. Sec. 4545, R.C.M. 1935; R.C.M. 1947, 16-1401(part); amd. Sec. 5, Ch. 249, L. 1979; amd. Sec. 4, Ch. 681, L. 1991; amd. Sec. 15, Ch. 543, L. 1995.

Compiler's Comments

1995 Amendment: Chapter 543 at end inserted "subject to the provisions of 7-1-201 through 7-1-203"; deleted (2) that read: "(2) The board of county commissioners shall, at a public meeting, pass a resolution establishing the number of members of the fair commission and the terms of the appointments. The fair commission must consist of at least three members and no more than nine members, and the members of the board must be residents of the county"; and made minor changes in style.

Cross-References

Supervision of county and other officers, 7-4-2110.

General authority of County Commissioners, 7-5-2101.

Joint Fair and Civic Center Commission, 7-21-3451 through 7-21-3458.

7-21-3402. Repealed. Sec. 8, Ch. 681, L. 1991.

History: En. Sec. 1, Ch. 67, L. 1903, re-en. Sec. 2927, Rev. C. 1907; amd. Sec. 1, Ch. 131, L. 1917; amd. Sec. 1, Ch. 139, L. 1921; re-en. Sec. 4545, R.C.M. 1921; amd. Sec. 1, Ch. 30, L. 1927; amd. Sec. 1, Ch. 52, L. 1935; re-en. Sec. 4545, R.C.M. 1935; R.C.M. 1947, 16-1401(part).

7-21-3403. *(Temporary)* **Qualifications for office.** Persons appointed as county fair commissioners shall be well qualified to perform the duties of organizing and successfully carrying on the county fair. *(Repealed October 1, 1996—sec. 25, Ch. 543, L. 1995.)*

History: (1)En. Sec. 1, Ch. 67, L. 1903, re-en. Sec. 2927, Rev. C. 1907; amd. Sec. 1, Ch. 131, L. 1917; amd. Sec. 1, Ch. 139, L. 1921; re-en. Sec. 4545, R.C.M. 1921; amd. Sec. 1, Ch. 30, L. 1927; amd. Sec. 1, Ch. 52, L. 1935; re-en. Sec. 4545, R.C.M. 1935; Sec. 16-1401,

R.C.M. 1947; (2)En. Sec. 2, Ch. 52, L. 1935; re-en. Sec. 4545.1, R.C.M. 1935; Sec. 16-1402, R.C.M. 1947; R.C.M. 1947, 16-1401(part), 16-1402(part); amd. Sec. 1, Ch. 342, L. 1983.

Cross-References

General authority of County Commissioners, 7-5-2101.

7-21-3404. *(Temporary)* **Organization of county fair commission.** Said commission shall organize by electing one of its members president and one of its members vice-president. The county treasurer shall be ex officio the treasurer. The secretary shall be appointed by the commission and may be a member of the commission. *(Repealed October 1, 1996—sec. 25, Ch. 543, L. 1995.)*

History: En. Sec. 5, Ch. 67, L. 1903; re-en. Sec. 2931, Rev. C. 1907; superseded by Sec. 3, Ch. 30, L. 1911; amd. Sec. 3, Ch. 131, L. 1917; re-en. Sec. 4547, R.C.M. 1921; re-en. 4547, R.C.M. 1935; R.C.M. 1947, 16-1404(part).

Cross-References

Office of County Treasurer, 7-4-3002.

Duties of County Treasurer, 7-6-2111.

7-21-3405. *(Temporary)* **Compensation of county fair commissioners.** (1) Each member of the commission is entitled to a salary of $25 a year as compensation for his services. If the secretary of the county fair commission is a member of the commission, then his salary shall be fixed by the commission in lieu of the salary of $25 a year.

(2) In addition to the salary provided by subsection (1), each commissioner may be allowed his actual and necessary expenses while fulfilling the duties of his office. *(Repealed October 1, 1996—sec. 25, Ch. 543, L. 1995.)*

History: Ap. p. Sec. 3, Ch. 67, L. 1903; re-en. Sec. 2929, Rev. C. 1907; amd. Sec. 4, Ch. 131, L. 1917; re-en. Sec. 4548, R.C.M. 1921; re-en. Sec. 4548, R.C.M. 1935; Sec. 16-1405, R.C.M. 1947; Ap. p. Sec. 5, Ch. 67, L. 1903; re-en. Sec. 2931, Rev. C. 1907; superseded by Sec. 3, Ch. 30, L. 1911; amd. Sec. 3, Ch. 131, L. 1917; re-en. Sec. 4547, R.C.M. 1921; re-en. 4547, R.C.M. 1935; Sec. 16-1404, R.C.M. 1947; R.C.M. 1947, 16-1404(part), 16-1405; amd. Sec. 6, Ch. 249, L. 1979.

Cross-References

Presentation of claims against county, 7-6-2421.

7-21-3406. Powers of county fair commission. In addition to the powers and duties established in the resolution of the board of county commissioners creating the county fair commission and by the provisions of 7-21-3407 through 7-21-3414, the county fair commissioners have control and operation of the fair and the supervision and management of the fairgrounds and also the leasing of buildings and fairgrounds on a continuous basis throughout the fiscal year and shall return to the fair fund of the county all revenue obtained from the leasing or renting of the the buildings and fairgrounds.

History: En. Sec. 2, Ch. 52, L. 1935; re-en. Sec. 4545.1, R.C.M. 1935; R.C.M. 1947, 16-1402(part); amd. Sec. 9, Ch. 553, L. 1989; amd. Sec. 16, Ch. 543, L. 1995.

Compiler's Comments

1995 Amendment: Chapter 543 at beginning substituted "In addition to the powers and duties established in the" for "By" and after "commissioners" inserted "creating the county fair commission and by the provisions of 7-21-3407 through 7-21-3414"; and made minor changes in style.

Cross-References

Authorization to lease county property, 7-8-2231.

Selling and serving beer on county fairground — special permit, 16-4-204, 16-4-301.

County drinking and driving prevention programs — funding, 61-2-106 through 61-2-108.

7-21-3407. Duties of county fair commission. (1) The commission shall do all things necessary to hold a successful annual county agricultural fair in their respective counties, including:

(a) employment of labor;

(b) awarding of prizes;

(c) making and signing of exhibition contracts;

(d) charging admission and entrance fees; and

(e) everything necessary in conducting the continuing operation of the county fairgrounds and buildings.

(2) The commission shall have charge of all fairgrounds and fair property.

History: En. Sec. 4, Ch. 67, L. 1903; re-en. Sec. 2930, Rev. C. 1907; superseded by Sec. 3, Ch. 30, L. 1911; amd. Sec. 2, Ch. 131, L. 1917; re-en. Sec. 4546, R.C.M. 1921; re-en. Sec. 4546, R.C.M. 1935; R.C.M. 1947, 16-1403; amd. Sec. 10, Ch. 553, L. 1989.

Cross-References

Exemption from county printing law, 7-5-2414.

7-21-3408. Acquisition of property for fair purposes. (1) The board of county commissioners of any county in Montana may purchase, receive by donation, or own and hold land in their respective county as county fairgrounds.

(2) The board which shall avail itself of the foregoing provisions may purchase, erect, construct, and maintain permanent improvements on such fairgrounds.

History: En. Sec. 1, Ch. 165, L. 1907; Sec. 2932, Rev. C. 1907; amd. Sec. 6, Ch. 131, L. 1917; amd. Sec. 2, Ch. 139, L. 1921; re-en. Sec. 4550, R.C.M. 1921; re-en. Sec. 4550, R.C.M. 1935; amd. Sec. 1, Ch. 6, L. 1945; amd. Sec. 2, Ch. 176, L. 1947; R.C.M. 1947, 16-1407(part); amd. Sec. 2, Ch. 342, L. 1983.

Cross-References

Authorization for governmental and public entities to take property by gift or devise, 7-8-103.

Erection and maintenance of county buildings, 7-8-2102.

Authorization for county to obtain property, 7-8-2201.

7-21-3409. Lease of county fairgrounds and buildings. (1) Boards of county commissioners or county fair commissions are hereby authorized to lease county fairgrounds and buildings thereon on such terms as they shall deem proper.

(2) In the event same are leased for entertainment purposes, the county commissioners or county fair commission shall collect an amount deemed proper by them.

(3) No lease may be executed unless the lessee gives bond or public liability and property damage insurance, or both, as may be required by the board of county commissioners or the county fair commission.

(4) No lease shall be executed unless the lessee agrees to furnish adequate police protection over all property so leased. Any lease shall be subject to immediate cancellation by the board or commission in case the lessee fails to maintain order or to properly police the grounds.

(5) All money received from the leasing of fairgrounds shall be deposited in the fair fund of the county.

(6) Nothing herein shall be construed to prevent county commissioners or the county fair commission from allowing schools to use fairgrounds for athletic or other public school purposes.

History: (1) thru (3), (5)En. Sec. 1, Ch. 11, Ex. L. 1933; re-en. Sec. 4513.3, R.C.M. 1935; Sec. 16-1154, R.C.M. 1947; (4)En. Sec. 2, Ch. 11, Ex. L. 1933; re-en. Sec. 4513.4, R.C.M. 1935; Sec. 16-1155, R.C.M. 1947; R.C.M. 1947, 16-1154, 16-1155; amd. Sec. 3, Ch. 342, L. 1983; amd. Sec. 11, Ch. 553, L. 1989.

Cross-References

Authorization to lease county property, 7-8-2231.

Distribution of lease revenue, 7-8-2232.

Suretyship, Title 28, ch. 11, part 4.

7-21-3410. Funding of county fair activities. (1) The board of county commissioners of their respective counties may appropriate annually, out of the general fund of the county treasury and to the county fair commission, a sum not to exceed $3,500, to be expended by the county fair commission for the purpose of holding a county fair and/or junior fair and for advertising the products and resources of their county.

(2) In addition to the appropriation above provided for or in lieu thereof, the county commissioners of any county in Montana shall have the power to levy an ad valorem tax of 1 1/2 mills or less on each dollar of taxable property in such county for the purpose of securing, equipping, maintaining, and operating a county fair and/or a junior fair, including the purchase of land for such purposes and the erection of such buildings and other appurtenances as may be necessary.

(3) The funds derived from such appropriation or tax levy shall be kept in a separate fund by the county treasurer and shall be paid out by the treasurer on order signed by the president and secretary of the fair commission.

History: (1), (2)En. Sec. 2, Ch. 67, L. 1903; re-en. Sec. 2928, Rev. C. 1907; amd. Sec. 5, Ch. 131, L. 1917; re-en. Sec. 4549, R.C.M. 1921; amd. Sec. 1, Ch. 32, L. 1927; re-en. Sec. 4549, R.C.M. 1935; amd. Sec. 1, Ch. 176, L. 1947; amd. Sec. 1, Ch. 134, L. 1955; amd. Sec. 1, Ch. 154, L. 1971; Sec. 16-1406, R.C.M. 1947; (3)En. Sec. 1, Ch. 165, L. 1907; Sec. 2932, Rev. C. 1907; amd. Sec. 6, Ch. 131, L. 1917; amd. Sec. 2, Ch. 139, L. 1921; re-en. Sec. 4550, R.C.M. 1921; re-en. Sec. 4550, R.C.M. 1935; amd. Sec. 1, Ch. 6, L. 1945; amd. Sec. 2, Ch. 176, L. 1947; Sec. 16-1407, R.C.M. 1947; R.C.M. 1947, 16-1406(part), 16-1407(part).

Cross-References

Duties of County Treasurer, 7-6-2111.

Authorization for county mill levy, 7-6-2501.

Incorporation of property tax levy into county all-purpose levy, 7-6-2523.

7-21-3411. Restriction on use of appropriation or tax money. No portion of the appropriation or tax levy provided for in 7-21-3410 shall be expended for horseracing.

History: En. Sec. 2, Ch. 67, L. 1903; re-en. Sec. 2928, Rev. C. 1907; am.d Sec. 5, Ch. 131, L. 1917; re-en. Sec. 4549, R.C.M. 1921; amd. Sec. 1, Ch. 32, L. 1927; re-en. Sec. 4549, R.C.M. 1935; amd. Sec. 1, Ch. 176, L. 1947; amd. Sec. 1, Ch. 134, L. 1955; amd. Sec. 1, Ch. 154, L. 1971; R.C.M. 1947, 16-1406(part).

7-21-3412. Appropriation of money for expenses of exhibiting at other fairs. The board of county commissioners of any county in Montana may appropriate each year the sum of $1,000 (or so much thereof as may be necessary) out of the general funds of the county for the purpose of defraying the expenses of collecting, transporting, and taking care of any exhibit from such county at any state fair, county agricultural fair, 4-H club or future farmers fair, seed show, or other agricultural exhibit held within the state or county.

History: En. Sec. 1, Ch. 165, L. 1907; Sec. 2932, Rev. C. 1907; amd. Sec. 6, Ch. 131, L. 1917; amd. Sec. 2, Ch. 139, L. 1921; re-en. Sec. 4550, R.C.M. 1921; re-en. Sec. 4550,

R.C.M. 1935; amd. Sec. 1, Ch. 6, L. 1945; amd. Sec. 2, Ch. 176, L. 1947; R.C.M. 1947, 16-1407(part).

Cross-References

General authority of County Commissioners, 7-5-2101.

7-21-3413. Capital improvement fund authorized. The fair commission of any county in Montana is authorized to establish, by a vote of the majority of the commission, a capital improvement fund for the replacement and acquisition of property, buildings, or equipment costing more than $5,000 and having a useful life of 5 years or more.

History: En. 16-1407.1 by Sec. 2, Ch. 19, L. 1975; R.C.M. 1947, 16-1407.1.

Cross-References

Authorization to establish capital improvement fund, 7-6-2219.

Erection and maintenance of county buildings, 7-8-2102.

7-21-3414. Management of capital improvement fund. (1) Money for the capital improvement fund shall be derived from the unexpended money obtained by the fair commission under 7-21-3410.

(2) The capital improvement fund may not exceed at any time a competent estimate of the cost of the adopted capital improvement program.

(3) All interest earned on the money in the capital improvement fund shall be paid into the county fair fund.

History: En. 16-1407.2 by Sec. 3, Ch. 19, L. 1975; R.C.M. 1947, 16-1407.2; amd. Sec. 4, Ch. 342, L. 1983.

Cross-References

Limitations on capital improvement fund, 7-6-2221.

7-21-3415 through 7-21-3420 reserved.

7-21-3421. Authorization to create multicounty fair district. (1) Two or more counties within the state, constituting a contiguous territory, may group themselves together and form a fair district.

(2) The board of county commissioners of any such county, upon application from the regularly appointed county fair commission, may by resolution declare its intention to join in and form a fair district.

History: En. Sec. 1, Ch. 178, L. 1931; re-en. Sec. 4550.1, R.C.M. 1935; R.C.M. 1947, 16-1408(part); amd. Sec. 7, Ch. 249, L. 1979.

Cross-References

General authority of County Commissioners, 7-5-2101.

Interlocal agreements, Title 7, ch. 11, part 1.

7-21-3422. Notice of intention to create fair district — hearing. Notice of the resolution of intent to create a fair district shall be published as provided in 7-1-2121, stating that a hearing shall be had on the resolution by the taxpayers and residents of the county and that objections will be heard.

History: En. Sec. 1, Ch. 178, L. 1931; re-en. Sec. 4550.1, R.C.M. 1935; R.C.M. 1947, 16-1408(part); amd. Sec. 8, Ch. 249, L. 1979; amd. Sec. 29, Ch. 349, L. 1985.

Cross-References

County printing contract, 7-5-2411.

7-21-3423. Decision by board of county commissioners. After the consideration of objections if there are any, the county commissioners may authorize the county fair commission to join with any existing contiguous district or to form a fair district with counties in contiguous territory.

History: En. Sec. 1, Ch. 178, L. 1931; re-en. Sec. 4550.1, R.C.M. 1935; R.C.M. 1947, 16-1408(part); amd. Sec. 9, Ch. 249, L. 1979.

Cross-References

General authority of County Commissioners, 7-5-2101.

7-21-3424. Authorization for additional counties to join fair district. A contiguous county or counties forming a territory contiguous to a fair district may be added to such fair district after its formation under the same provisions as set forth in 7-21-3421 through 7-21-3423, provided the board of directors of the fair district determines that it is to the best interest of said district that such county or counties be added.

History: En. Sec. 7, Ch. 178, L. 1931; re-en. Sec. 4550.7, R.C.M. 1935; R.C.M. 1947, 16-1414.

Cross-References

Interlocal agreements, Title 7, ch. 11, part 1.

7-21-3425. Board of directors of fair district. (1) The members of the respective county fair commissions of the counties forming a fair district shall appoint one member of their commission to the board of directors for the fair district.

(2) After a district has been formed and a county is added thereto, the members of the county fair commission of the county added to the fair district shall appoint one member of their commission to the board of directors for the fair district.

History: En. Sec. 2, Ch. 178, L. 1931; re-en. Sec. 4550.2, R.C.M. 1935; R.C.M. 1947, 16-1409; amd. Sec. 10, Ch. 249, L. 1979; amd. Sec. 5, Ch. 342, L. 1983.

7-21-3426. Organization of board and conduct of business. (1) The board of directors shall meet at the place of business, established under 7-21-3427, during the month of December of each year and organize, electing a presiding officer, vice presiding officer, and secretary for the board.

(2) Subsequent meetings must be held as may be found necessary for the conduct of the district fair.

(3) The board of directors shall have power to employ a secretary, whom they may vest with managerial powers, and they shall also appoint a treasurer. The office of secretary may be combined with that of treasurer.

(4) The board of directors shall see that:

(a) all records and accounts are properly kept, supervised, and approved;

(b) proper vouchers evidence all disbursements of money; and

(c) the records are open to the public during the office hours determined by the governing body by resolution after a public hearing.

History: En. Secs. 3, 4, Ch. 178, L. 1931; re-en. Secs. 4550.3, 4550.4, R.C.M. 1935; R.C.M. 1947, 16-1410(part), 16-1411(part); amd. Sec. 11, Ch. 249, L. 1979; amd. Sec. 5, Ch. 216, L. 1995.

Compiler's Comments

1995 Amendment: Chapter 216 in (4)(c) substituted "open to the public during the office hours determined by the governing body by resolution after a public hearing" for "at all reasonable hours open to the public"; and made minor changes in style.

Cross-References

Employment of personnel by County Commissioners, 7-5-2107.

7-21-3427. Role of fair district board of directors. (1) The board of directors shall be charged with the care and custody of all property of the district fair. They shall have power to acquire for the benefit of the district such real and personal property as may be required in connection with the conduct of district fairs.

(2) They shall be vested with the general powers granted commissioners of county fairs. They shall have power to do everything necessary in connection with the holding of the annual district fair, including the employment of labor, awarding of prizes, making of exhibition contracts, charging admission and entrance fees, and everything that is necessary in conducting the business of the district. They shall fix the salaries of all employees and prescribe the time and manner of payment.

(3) They shall designate a place within the fair district where the fairgrounds shall be located, and this place shall thereafter be the place of business of said district.

(4) They shall formulate in writing and file in the district office all plans adopted by them from time to time in connection with the conduct of the affairs of said district.

History: Ap. p. Sec. 3, Ch. 178, L. 1931; re-en. Sec. 4550.3, R.C.M. 1935; Sec. 16-1410, R.C.M. 1947; Ap. p. Sec. 4, Ch. 178, L. 1931; re-en. Sec. 4550.4, R.C.M. 1935; Sec. 16-1411, R.C.M. 1947; R.C.M. 1947, 16-1410(part), 16-1411(part).

Cross-References

Acquisition, transfer, and management of county property, Title 7, ch. 8, part 22.

7-21-3428. Title to fair district property. The ownership of the real or personal property acquired by the fair district shall be vested in the joint ownership of the counties comprising the district or in one county for the benefit of the district, as may be provided for by the board of directors.

History: En. Sec. 6, Ch. 178, L. 1931; re-en. Sec. 4550.6, R.C.M. 1935; R.C.M. 1947, 16-1413.

Cross-References

Authorization to transfer property between certain governmental entities, 7-8-101.

7-21-3429. Preparation of fair district budget. (1) To raise the revenue necessary to hold district fairs, the board of directors shall meet during the first week of May of each year and make a budget of the amounts required in the conduct of the affairs of the district for the following year. The board shall deduct from the budget the probable income from the annual district fair and other exhibitions to be held by the district during the following year.

(2) The board shall then apportion the remaining balance among the various counties forming the district in proportion to the assessed property of each county as determined by the assessment rolls of the preceding year. By mutual agreement of the directors, the share apportioned to the county in which the fair is being conducted may be made larger than in other counties comprising the district.

History: En. Sec. 5, Ch. 178, L. 1931; re-en. Sec. 4550.5, R.C.M. 1935; amd. Sec. 38, Ch. 566, L. 1977; R.C.M. 1947, 16-1412(part).

Cross-References

County budget law, Title 7, ch. 6, part 23.

7-21-3430. Certification of budget to boards of county commissioners. The secretary shall certify to each board of county commissioners the amount of the budget and the amount of revenue to be raised by the county for these purposes and shall file a certified copy thereof with the clerk of the board of county commissioners of each of the counties in the district on or before June 1 of each year.

History: En. Sec. 5, Ch. 178, L. 1931; re-en. Sec. 4550.5, R.C.M. 1935; amd. Sec. 38, Ch. 566, L. 1977; R.C.M. 1947, 16-1412(part).

Cross-References

Employment of personnel by County Commissioners, 7-5-2107.

County budget law, Title 7, ch. 6, part 23.

7-21-3431. Meeting on fair district budget. The respective boards of county commissioners of the counties comprising the district shall meet in joint assembly with their county fair commissioners during the first week of June of each year and jointly consider the budget proposed by the board of directors of the district and give such approval or suggest such amendments or modifications as they think proper and desirable.

History: En. Sec. 5, Ch. 178, L. 1931; re-en. Sec. 4550.5, R.C.M. 1935; amd. Sec. 38, Ch. 566, L. 1977; R.C.M. 1947, 16-1412(part).

Cross-References

Meetings of Board of County Commissioners, 7-5-2122.

7-21-3432. Effect of failure of county commissioners to meet or take action. If the county commissioners fail to hold the joint meeting or fail to take any action, then the budget certified by the secretary of the fair district shall be approved without further action and the sums of money apportioned to the county shall be the sums to be raised by special levy for this purpose.

History: En. Sec. 5, Ch. 178, L. 1931; re-en. Sec. 4550.5, R.C.M. 1935; amd. Sec. 38, Ch. 566, L. 1977; R.C.M. 1947, 16-1412(part).

7-21-3433. Authorization for mill levy. (1) For the purpose of raising the revenues, the board of county commissioners of each county in the district shall annually make a levy to raise the required sum apportioned to the respective county.

(2) However, the levy shall not exceed 1 mill on the dollar of the taxable value of all the taxable property in the county, except in the case of the county in which the fair is being conducted. In this county, the levy shall not exceed 1 1/2 mills on the dollar of taxable property in the county.

History: En. Sec. 5, Ch. 178, L. 1931; re-en. Sec. 4550.5, R.C.M. 1935; amd. Sec. 38, Ch. 566, L. 1977; R.C.M. 1947, 16-1412(part).

Cross-References

Authorization for county mill levy, 7-6-2501.

7-21-3434. Transfer of county fair money to fair district. In addition to the levy authorized by 7-21-3433, any and all money available for the holding of county fairs may be allotted and transferred to the use of the district fair, as the respective county fair commissioners may elect.

History: En. Sec. 5, Ch. 178, L. 1931; re-en. Sec. 4550.5, R.C.M. 1935; amd. Sec. 38, Ch. 566, L. 1977; R.C.M. 1947, 16-1412(part).

7-21-3435. Management of fair district money — district fair fund. (1) The funds available to a district fair shall, on the first Monday in August or as soon thereafter as may be possible, be deposited with the county treasurer of the county in which the district fair is to be held and credited to a fund to be known as the district fair fund and shall be held and paid out in the same manner as the county fair fund, except that it shall be paid out on district fair board warrants signed by the chairman or the vice-chairman and the secretary of the district fair board.

(2) The treasurer of the county in which the district fair will be held shall carry the money received from the various counties in the district in the regular county fair fund in the same manner as regular county fair money, payable, however, only on district fair warrants.

History: En. Sec. 5, Ch. 178, L. 1931; re-en. Sec. 4550.5, R.C.M. 1935; amd. Sec. 38, Ch. 566, L. 1977; R.C.M. 1947, 16-1412(part).

Cross-References

Duties of County Treasurer, 7-6-2111.

7-21-3436 through 7-21-3450 reserved.

7-21-3451. Authorization to create a joint fair and civic center commission. (1) The board of county commissioners shall have the power to create a joint fair and civic center commission for the management and operation of fairgrounds and civic centers within the county.

(2) The board of county commissioners of a county, upon application from the regularly appointed county fair commission and county building commission, may by resolution create a joint fair and civic center commission.

(3) The joint fair and civic center commission is vested with the full powers granted to the county fair commission and the county building commission.

History: En. Sec. 1, Ch. 553, L. 1989.

Cross-References

County Building Commission, 7-8-2103.

7-21-3452. Organization of joint fair and civic center commission. (1) The members of the county fair commission and county building commission constitute the joint fair and civic center commission and shall act as a unified board.

(2) The joint fair and civic center commission shall meet during the month of December of each year. The commission shall elect a presiding officer, vice presiding officer, and secretary for the commission.

(3) Subsequent meetings may be held as necessary for the conduct of the duties outlined in 7-21-3454.

(4) The joint fair and civic center commission may employ a secretary, whom they may vest with managerial powers, and they shall also appoint a treasurer. The office of secretary may be combined with that of treasurer.

(5) The commission shall ensure that:

(a) all records and accounts are properly kept, supervised, and approved;

(b) proper vouchers accompany all disbursements of money; and

(c) the records are open to the public during the office hours determined by the governing body by resolution after a public hearing.

History: En. Sec. 2, Ch. 553, L. 1989; amd. Sec. 6, Ch. 216, L. 1995.

Compiler's Comments

1995 Amendment: Chapter 216 in (5)(c) substituted "open to the public during the office hours determined by the governing body by resolution after a public hearing" for "open to the public at all reasonable hours"; and made minor changes in style.

Cross-References

County Building Commission, 7-8-2103.

7-21-3453. Term of office. The term of office of each commissioner must coincide with his term of office on the county fair commission or the county building commission.

History: En. Sec. 3, Ch. 553, L. 1989.

Cross-References

County Building Commission, 7-8-2103.

7-21-3454. Duties of joint commission. The duties of the joint county fair and civic center commission are the same as the duties of the county fair commission and the county building commission.

History: En. Sec. 4, Ch. 553, L. 1989.

Cross-References

Duties of County Building Commission, 7-8-2103.

Duties of County Fair Commission, 7-21-3407.

7-21-3455. Preparation of county fair or joint county fair and civic center budget. (1) To raise the revenue necessary to hold a county fair and to manage the operation of the fairgrounds and its buildings and the civic center, the county fair commission or the joint fair and civic center commission shall meet during the first week of May of each year and prepare a budget for the management and operation of the fair, the fairgrounds and its buildings, and the civic center for the following year.

(2) The joint commission shall deduct from the budget the probable income from the annual county fair and other events and exhibitions to be held at the complex during the following year.

(3) The secretary of the fair commission or the joint commission shall certify to the board of county commissioners the amount of the budget and the amount of revenue expected to be raised by the county for these purposes and shall file a certified copy thereof with the clerk of the board of county commissioners on or before June 1 of each year.

History: En. Sec. 5, Ch. 553, L. 1989.

7-21-3456. Meeting on county fair and civic center budgets. The board of county commissioners shall meet with the members of the joint fair and civic center commission before the third week of July of each year to jointly consider the budget proposed by the county fair commission or joint fair and civic center commission and authorize approval or suggest such amendments or modifications as the county commissioners think proper and desirable.

History: En. Sec. 6, Ch. 553, L. 1989.

7-21-3457. Effect of failure of county commissioners to meet or take action. If the county commissioners fail to hold a joint meeting or fail to take any action, the budget certified by the secretary of the fair commission or the joint fair and civic center commission must be approved without further action and the sum of money apportioned to the county must be the sum to be raised by special levy for this purpose under 7-21-3410 through 7-21-3412.

History: En. Sec. 7, Ch. 553, L. 1989.

7-21-3458. General authority of county commissioners. Nothing in 7-21-3451 through 7-21-3458 may be construed to limit the general authority of the county commissioners established in 7-5-2101.

History: En. Sec. 8, Ch. 553, L. 1989.

Parts 35 through 40 reserved

Part 41

Municipal Licensing Authority

Part Cross-References

General county licensing authority, Title 7, ch. 21, part 21.

7-21-4101. General licensing power of municipalities. (1) The city or town council has power:

(a) to license by ordinance all industries, pursuits, professions, and occupations and to impose penalties for failure to comply with such license requirements;

(b) to fix the amount, terms, and manner of issuing and revoking licenses.

(2) The council may refuse to issue licenses when it may deem it best for the public interests.

History: Ap. p. Subds. 3, 4, Sec. 5039, R.C.M. 1921; amd. Sec. 1, Ch. 115, L. 1925; amd. Sec. 1, Ch. 20, L. 1927; re-en. Secs. 5039.2, 5039.3, R.C.M. 1935; Secs. 11-903, 11-904, R.C.M. 1947; Ap. p. Sec. 4900, Pol. C. 1895; re-en. Sec. 3366, Rev. C. 1907; re-en. Sec. 5224, R.C.M. 1921; re-en. Sec. 5224, R.C.M. 1935; Sec. 84-4737, R.C.M. 1947; R.C.M. 1947, 11-903, 11-904, 84-4737(part).

Cross-References

General powers of Municipal Council, 7-5-4101.

Municipal ordinances, 7-5-4201.

General licensing power of counties, 7-21-2101.

7-21-4102. Collection of license fees. The city treasurer must collect the license fees authorized by 7-21-4101 in the manner and at the time prescribed by ordinance.

History: En. Sec. 4900, Pol. C. 1895; re-en. Sec. 3366, Rev. C. 1907; re-en. Sec. 5224, R.C.M. 1921; re-en. Sec. 5224, R.C.M. 1935; R.C.M. 1947, 84-4737(part).

Cross-References

Municipal ordinances, 7-5-4201.

Duties of City Treasurer relating to finances, 7-6-4104.

7-21-4103. Issuance of licenses. The city clerk must issue such licenses.

History: En. Sec. 4900, Pol. C. 1895; re-en. Sec. 3366, Rev. C. 1907; re-en. Sec. 5224, R.C.M. 1921; re-en. Sec. 5224, R.C.M. 1935; R.C.M. 1947, 84-4737(part).

Cross-References

Duties of City Clerk related to administration, 7-4-4501.

Part 42

Municipal Regulation of Business and Commodities

Part Cross-References

General county licensing authority, Title 7, ch. 21, part 21.

7-21-4201. Regulation of certain activities. (1) The city or town council may license, tax, and regulate:

(a) auctioneers, peddlers, pawnbrokers, and secondhand and junk shops;

(b) motor vehicles and motor vehicle bodies, except those on commercial property, which are not otherwise taxed;

(c) drivers, porters, tenpin alleys, shooting galleries, shows, circuses, street parades, theatrical performances, and places of amusement within the city or town.

(2) The power to license, tax, and regulate circuses and shows of like character extends 3 miles beyond the limits of the city or town.

(3) The council of any city or town may enact necessary ordinances providing for the licensing, taxation, and regulation of soft drink establishments and all pool and billiard halls. The city or town council may regulate and limit the number of such licenses issued and provide by ordinance that the total number of such licenses may not exceed the number fixed by the city or town council by ordinance.

History: (1), (2)En. Subd. 16, Sec. 5039, R.C.M. 1921; amd. Sec. 1, Ch. 115, L. 1925; amd. Sec. 1, Ch. 20, L. 1927; re-en. Sec. 5039.15, R.C.M. 1935; amd. Sec. 1, Ch. 192, L. 1965; Sec. 11-918, R.C.M. 1947; (3)En. Sec. 1, Ch. 136, L. 1923, re-en. Sec. 5039.84, R.C.M. 1935; Sec. 11-987, R.C.M. 1947; R.C.M. 1947, 11-918, 11-987; amd. Sec. 12, Ch. 249, L. 1979.

Cross-References

General powers of Municipal Council, 7-5-4101.

Municipal ordinances, 7-5-4201.

7-21-4202. Regulation of foodstuffs. The city or town council has power to provide for and regulate the inspection of flour, meal, and all provisions and oils; to regulate the inspection of milk, water, butter, lard, and other provisions; to regulate the vending of meat, poultry, fish, game, and vegetables; to restrain and punish the forestalling of provisions.

History: En. Subd. 22, Sec. 5039, R.C.M. 1921; amd. Sec. 1, Ch. 115, L. 1925; amd. Sec. 1, Ch. 20, L. 1927; re-en. Sec. 5039.21, R.C.M. 1935; R.C.M. 1947, 11-924; amd. Sec. 17, Ch. 577, L. 1987.

Cross-References

Authority of municipal corporations, 81-2-105.

7-21-4203. Authority to weigh, measure, and regulate certain commodities. The city or town council has power to regulate the inspection, weighing, and measuring of wood, coal, stone, corn or other grain, and hay within the city or town.

History: En. Subd. 23, Sec. 5039, R.C.M. 1921; amd. Sec. 1, Ch. 115, L. 1925; amd. Sec. 1, Ch. 20, L. 1927; re-en. Sec. 5039.22, R.C.M. 1935; R.C.M. 1947, 11-925.

Cross-References

Weights, measures, standards, and labeling, Title 30, ch. 12.

Grain standards, Title 80, ch. 4, part 1.

7-21-4204. Regulation of location of businesses, factories, and steam boilers. The city or town council has power:

(1) to regulate the location of slaughterhouses, breweries, distilleries, livery stables, foundries, blacksmith shops, planing mills, soap factories, and tanneries within the city or town and to prohibit any offensive and unwholesome establishments within the city or town limits or within 3 miles thereof;

(2) to regulate the location of steam boilers.

History: En. Subds. 42, 70, Sec. 5039, R.C.M. 1921; amd. Sec. 1, Ch. 115, L. 1925; amd. Sec. 1, Ch. 20, L. 1927; re-en. Secs. 5039.41, 5039.69, R.C.M. 1935; R.C.M. 1947, 11-944, 11-972(part).

Cross-References

Municipal zoning, Title 76, ch. 2, part 3.

7-21-4205. Licensing and regulating of vehicles engaged in transporting persons and property. The city or town council has power to license and regulate automobiles, trucks, hackney carriages, carts, omnibuses, wagons, and drays and to fix the rate to be charged for the carriage of persons and property within the city or town and to the public works and property without the limits of the city or town.

History: En. Subd. 54, Sec. 5039, R.C.M. 1921; amd. Sec. 1, Ch. 115, L. 1925; amd. Sec. 1, Ch. 20, L. 1927; re-en. Sec. 5039.53, R.C.M. 1935; R.C.M. 1947, 11-956.

Cross-References

Carriers of passengers, Title 69, ch. 11, part 2.

Carriers of property, Title 69, ch. 11, part 4.

7-21-4206. Control of erection of signs and awnings. The city or town council has power to regulate the putting up of signs and awnings.

History: En. Subd. 70, Sec. 5039, R.C.M. 1921; amd. Sec. 1, Ch. 115, L. 1925; amd. Sec. 1, Ch. 20, L. 1927; re-en. Sec. 5039.69, R.C.M. 1935; R.C.M. 1947, 11-972(part).

7-21-4207. Authority to require records for pawn, secondhand, and junk shops. The city or town council has power to require the owners and keepers of pawn, secondhand, and junk shops to keep a record of all articles purchased or pawned to them. The record and the articles purchased or pawned are subject to the inspection of all police officers of the city or town.

History: En. Subd. 17, Sec. 5039, R.C.M. 1921; amd. Sec. 1, Ch. 115, L. 1925; amd. Sec. 1, Ch. 20, L. 1927; re-en. Secs. 5039.16, R.C.M. 1935; R.C.M. 1947, 11-919.

Cross-References

Regulation of pawnbrokers, 7-21-2120.

Pawnbrokers — regulation, Title 31, ch. 1, part 4.

7-21-4208. Regulation of purchases from minors by pawn, secondhand, and junk shops. The city or town council has power to prevent the keepers of pawn, secondhand, and junk shops from the purchasing of any article from a minor without the written consent of the parent or guardian of such minor.

History: En. Subd. 18, Sec. 5039, R.C.M. 1921; amd. Sec. 1, Ch. 115, L. 1925; amd. Sec. 1, Ch. 20, L. 1927; re-en. Sec. 5039.17, R.C.M. 1935; R.C.M. 1947, 11-920.

Cross-References

Regulation of pawnbrokers, 7-21-2120.

Pawnbrokers — regulation, Title 31, ch. 1, part 4.

7-21-4209. Establishment and supervision of markets. The city or town council has power to establish markets and market houses and provide for the supervision and use thereof.

History: En. Subd. 21, Sec. 5039, R.C.M. 1921; amd. Sec. 1, Ch. 115, L. 1925; amd. Sec. 1, Ch. 20, L. 1927; re-en. Sec. 5039.20, R.C.M. 1935; R.C.M. 1947, 11-923.

Cross-References

Public markets, Title 7, ch. 21, part 33.

7-21-4210. Regulation of dance houses. The city or town council has power to regulate or prohibit dance houses within the city or town limits and within 3 miles thereof.

History: En. Subd. 19, Sec. 5039, R.C.M. 1921; amd. Sec. 1, Ch. 115, L. 1925; amd. Sec. 1, Ch. 20, L. 1927; re-en. Sec. 5039.18, R.C.M. 1935; R.C.M. 1947, 11-921.

7-21-4211. Repealed. Sec. 2, Ch. 471, L. 1981.

History: En. Subd. 71, Sec. 5039, R.C.M. 1921; amd. Sec. 1, Ch. 115, L. 1925; amd. Sec. 1, Ch. 20, L. 1927; re-en. Sec. 5039.70, R.C.M. 1935; R.C.M. 1947, 11-973.

7-21-4212. Repealed. Sec. 14, Ch. 506, L. 1983.

History: En. Sec. 1, Ch. 471, L. 1981.

CHAPTER 22

WEED AND PEST CONTROL

Part 1 — Control of Dutch Elm Disease (Repealed. Sec. 1, Ch. 18, L. 1987)

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7-22-2115. Noxious weeds and seeds declared nuisance.
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7-22-2410. Protest to creation of district.
7-22-2411. District to be governed by appointed mosquito control board.
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7-22-2413. Compensation.
7-22-2414. Organization of mosquito control board.

7-22-2415. Powers of mosquito control board.
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7-22-2417. Unlawful to interfere with mosquito control personnel.
7-22-2418. Relationship of mosquito control districts and boards with department of environmental quality and department of agriculture.
7-22-2419. Establishment and operation of joint mosquito control districts.
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7-22-2421 through 7-22-2430 reserved.
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7-22-2501. Definitions.
7-22-2502. Establishment of program — cooperation.
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Part 41 — Municipal Weed Control

7-22-4101. Control of nuisance weeds within municipality.

Chapter Cross-References

Agriculture — disease, pest, and weed control, Title 80, ch. 7.

Part 1

Control of Dutch Elm Disease (Repealed. Sec. 1, Ch. 18, L. 1987)

Part Compiler's Comments

Histories of Repealed Sections:

7-22-101 through 7-22-103. En. Secs. 1 through 3, Ch. 535, L. 1979.

7-22-104 through 7-22-106. En. Secs. 11 through 13, Ch. 535, L. 1979.

7-22-107 through 7-22-110 reserved.

7-22-111 through 7-22-118. En. Secs. 4 through 10, Ch. 535, L. 1979.

Parts 2 through 20 reserved

Part 21

County Weed Control

Part Cross-References

Municipal weed control, 7-22-4101.

Weed control — Department of Agriculture, Title 80, ch. 7, part 7.

Noxious weed management funding, Title 80, ch. 7, part 8.

7-22-2101. Definitions. As used in this part, unless the context indicates otherwise, the following definitions apply:

(1) "Board" means a district weed board created under 7-22-2103.

(2) "Commissioners" means the board of county commissioners.

(3) "Department" means the department of agriculture provided for in 2-15-3001.

(4) "District" means a weed management district organized under 7-22-2102.

(5) "Native plant" means a plant endemic to the state of Montana.

(6) "Native plant community" means an assemblage of native plants occurring in a natural habitat.

(7) (a) "Noxious weeds" or "weeds" means any exotic plant species established or that may be introduced in the state which may render land unfit for agriculture, forestry, livestock, wildlife, or other beneficial uses or that may harm native plant communities and that is designated:

(i) as a statewide noxious weed by rule of the department; or

(ii) as a district noxious weed by a board, following public notice of intent and a public hearing.

(b) A weed designated by rule of the department as a statewide noxious weed must be considered noxious in every district of the state.

(8) "Person" means an individual, partnership, corporation, association, or state or local government agency or subdivision owning, occupying, or controlling any land, easement, or right-of-way, including any county, state, or federally owned and controlled highway, drainage or irrigation ditch, spoil bank, barrow pit, or right-of-way for a canal or lateral.

(9) "Supervisor" means the person employed by the board to conduct the district noxious weed management program and supervise other district employees.

(10) "Weed management" or "control" means the planning and implementation of a coordinated program for the containment, suppression, and, where possible, eradication of noxious weeds.

History: (1), (2), (4), (5)En. Sec. 1, Ch. 195, L. 1939; Secs. 16-1702, 16-1703, 16-1704, 16-1705, R.C.M. 1947; (3)En. Sec. 1, Ch. 195, L. 1939; amd. Sec. 1, Ch. 360, L. 1974; Sec. 16-1701, R.C.M. 1947; R.C.M. 1947, 16-1701(part), 16-1702(part), 16-1703, 16-1704, 16-1705; amd. Sec. 13, Ch. 249, L. 1979; amd. Sec. 1, Ch. 607, L. 1985; amd. Sec. 1, Ch. 303, L. 1991.

7-22-2102. Weed management districts established. A weed management district shall be formed in every county of this state and shall include all the land within the boundaries of the county, except that a weed management district may include more than one county through agreement of the commissioners of the affected counties.

History: En. 16-1709.1 by Sec. 1, Ch. 185, L. 1969; amd. Sec. 2, Ch. 360, L. 1974; R.C.M. 1947, 16-1709.1; amd. Sec. 2, Ch. 607, L. 1985.

Cross-References

Embargo against introduction of noxious weed seed from other states, 80-7-701.

7-22-2103. District weed board. (1) The commissioners shall appoint a district weed board subject to the provisions of 7-1-201 through 7-1-203.

(2) The board may call upon the county attorney for legal advice and services as it may require.

History: En. Sec. 9, Ch. 195, L. 1939; amd. Sec. 1, Ch. 90, L. 1941; amd. Sec. 2, Ch. 228, L. 1947; amd. Sec. 1, Ch. 51, L. 1961; amd. Sec. 1, Ch. 64, L. 1965; amd. Sec. 2, Ch. 185, L. 1969; amd. Sec. 3, Ch. 360, L. 1974; R.C.M. 1947, 16-1713(part); amd. Sec. 14, Ch. 249, L. 1979; amd. Sec. 3, Ch. 607, L. 1985; amd. Sec. 2, Ch. 52, L. 1989; amd. Sec. 5, Ch. 681, L. 1991; amd. Sec. 17, Ch. 543, L. 1995.

Compiler's Comments

1995 Amendment: Chapter 543 in (1), at end, inserted "subject to the provisions of 7-1-201 through 7-1-203"; deleted (2) through (4) that read: "(2) The commissioners shall, at a public meeting, pass a resolution establishing the number of members of the district weed board and the terms of the appointments. The board must consist of at least three members and no more than nine members, and the members of the board must be residents of the district. A majority of the board members must be rural agricultural land owners.

(3) The county extension agent in each county and other interested individuals may be appointed to serve as nonvoting members of that district's weed board.

(4) The board members are public officers"; and made minor changes in style.

Cross-References

General authority of County Commissioners, 7-5-2101.

Weed control — technical assistance, 80-7-711.

7-22-2104. Repealed. Sec. 8, Ch. 681, L. 1991.

History: En. Sec. 9, Ch. 195, L. 1939; amd. Sec. 1, Ch. 90, L. 1941; amd. Sec. 2, Ch. 228, L. 1947; amd. Sec. 1, Ch. 51, L. 1961; amd. Sec. 1, Ch. 64, L. 1965; amd. Sec. 2, Ch. 185, L. 1969; amd. Sec. 3, Ch. 360, L. 1974; R.C.M. 1947, 16-1713(part); amd. Sec. 15, Ch. 249, L. 1979; amd. Sec. 4, Ch. 607, L. 1985.

7-22-2105. *(Temporary)* **Organization of district weed board and compensation.** (1) The board shall organize by choosing a chairman and a secretary. The secretary may or may not be a member of the board.

(2) Salary, per diem, and mileage of such board members shall be set by resolution of the commissioners.

(3) A majority of the board constitutes a quorum for the conduct of business. *(Repealed October 1, 1996—sec. 25, Ch. 543, L. 1995.)*

History: En. Sec. 9, Ch. 195, L. 1939; amd. Sec. 1, Ch. 90, L. 1941; amd. Sec. 2, Ch. 228, L. 1947; amd. Sec. 1, Ch. 51, L. 1961; amd. Sec. 1, Ch. 64, L. 1965; amd. Sec. 2, Ch. 185, L. 1969; amd. Sec. 3, Ch. 360, L. 1974; R.C.M. 1947, 16-1713(part); amd. Sec. 5, Ch. 607, L. 1985.

Cross-References

Mileage allowance for County Commissioners — expenses, 7-4-2108.

General authority of County Commissioners, 7-5-2101.

7-22-2106. Renumbered 7-22-2115 by Code Commissioner, 1985.

7-22-2107. Renumbered 7-22-2116 by Code Commissioner, 1985.

7-22-2108. Renumbered 7-22-2117 by Code Commissioner, 1985.

7-22-2109. Powers and duties of board. (1) In addition to any powers or duties established in the resolution creating a district weed board, the board may:

(a) employ a supervisor and other employees as necessary and provide for their compensation;

(b) purchase chemicals, materials, and equipment and pay other operational costs as it determines necessary for implementing an effective weed management program. The costs must be paid from the noxious weed fund.

(c) determine what chemicals, materials, or equipment may be made available to persons controlling weeds on their own land. The cost for the chemicals, materials, or equipment must be paid by the person and collected as provided in this part.

(d) enter into agreements with the department for the control and eradication of any new exotic plant species not previously established in the state which may render land unfit for agriculture, forestry, livestock, wildlife, or other beneficial use if the plant species spreads or threatens to spread into the state; and

(e) perform other activities relating to weed management.

(2) The board shall:

(a) administer the district's noxious weed program;

(b) establish management criteria for noxious weeds on all land within the district;

(c) make all reasonable efforts to develop and implement a noxious weed program covering all land within the district owned or administered by a federal agency.

History: En. Sec. 6, Ch. 607, L. 1985; amd. Sec. 18, Ch. 543, L. 1995.

Compiler's Comments

1995 Amendment: Chapter 543 in (1), at beginning, inserted "In addition to any powers or duties established in the resolution creating a district weed board"; and made minor changes in style.

7-22-2110. Administrative hearing — appeals. (1) A person adversely affected by any notice, action, or order of the board may request an administrative hearing before the board. The board shall hold a hearing within 30 days of the request. Participants may be represented by legal counsel. The board shall make a record of the proceeding and enter its order and findings within 7 days after the hearing.

(2) An order of the board may be appealed to the commissioners within 30 days from the time the order is entered. The commissioners shall hear such appeal within 30 days after the notice of appeal and shall render their order and findings within 7 days after such hearing. Participants may be represented by legal counsel.

(3) Within 30 days after the commissioners render their order and findings, the person adversely affected may file a petition in district court requesting that the order and findings of the commissioners be set aside or modified. The court may affirm, modify, or set aside the order complained of, in whole or in part.

History: En. Sec. 15, Ch. 607, L. 1985.

7-22-2111. Liability restrictions. A district, as defined in 7-22-2101, is liable for damages caused by its use of herbicides only for an act or omission that constitutes gross negligence. The provisions of 2-9-305 apply to board members, supervisors, and employees of a district.

History: En. Sec. 1, Ch. 516, L. 1987.

Compiler's Comments

Termination Provision Repealed: Section 1, Ch. 171, L. 1995, repealed sec. 7, Ch. 516, L. 1987, which terminated this section July 1, 1991, and repealed sec. 8, Ch. 530, L. 1991, which extended the termination date to July 1, 1995.

7-22-2112. Information on herbicide use. The district must provide information on protective clothing, health hazards, and proper application techniques to mixers, loaders, and applicators of herbicides and make the information available for review by the public at the district office.

History: En. Sec. 2, Ch. 516, L. 1987.

Compiler's Comments

Termination Provision Repealed: Section 1, Ch. 171, L. 1995, repealed sec. 7, Ch. 516, L. 1987, which terminated this section July 1, 1991, and repealed sec. 8, Ch. 530, L. 1991, which extended the termination date to July 1, 1995.

7-22-2113 and 7-22-2114 reserved.

7-22-2115. Noxious weeds and seeds declared nuisance. Noxious weeds and the seed of any noxious weed are hereby declared a common nuisance.

History: Ap. p. Sec. 1, Ch. 195, L. 1939; Sec. 16-1702, R.C.M. 1947; Ap. p. Sec. 1, Ch. 195, L. 1939; amd. Sec. 1, Ch. 360, L. 1974; Sec. 16-1701, R.C.M. 1947; R.C.M. 1947, 16-1701(part), 16-1702(part); Sec. 7-22-2106, MCA 1983; redes. 7-22-2115 by Code Commissioner, 1985.

Cross-References

Nuisances, Title 27, ch. 30.

Weed control, Title 80, ch. 7, part 7.

7-22-2116. Unlawful to permit noxious weeds to propagate. It is unlawful for any person to permit any noxious weed to propagate or go to seed on his land, except that any person who adheres to the noxious weed management program of his district or who has entered into and is in compliance with a noxious weed management agreement is considered to be in compliance with this section.

History: En. Sec. 2, Ch. 195, L. 1939; amd. Sec. 1, Ch. 11, L. 1961; R.C.M. 1947, 16-1706; amd. Sec. 7, Ch. 607, L. 1985; Sec. 7-22-2107, MCA 1983; redes. 7-22-2116 by Code Commissioner, 1985.

Cross-References

Embargo against introduction of noxious weed seed from other states, 80-7-701.

7-22-2117. Violations. (1) Any person who in any manner interferes with the board or its authorized agent in carrying out the provisions of this part or who refuses to obey an order or notice of the board is guilty of a misdemeanor, and upon conviction thereof, he shall be fined not to exceed $100 for the first offense and not less than $100 or more than $200 for each subsequent offense.

(2) All fines, bonds, and penalties collected under the provisions of this part, except those collected by a justice's court, shall be paid to the county treasurer of each county and placed by him to the credit of a fund to be known as the noxious weed fund.

History: En. Sec. 18, Ch. 195, L. 1939; R.C.M. 1947, 16-1722; amd. Sec. 16, Ch. 249, L. 1979; amd. Sec. 8, Ch. 607, L. 1985; Sec. 7-22-2108, MCA 1983; redes. 7-22-2117 by Code Commissioner, 1985; amd. Sec. 4, Ch. 557, L. 1987.

Cross-References

Collection and disposition of fines, penalties, forfeitures, and fees collected by a Justice's Court, 3-10-601.

Classification of offenses, 45-1-201.

Misdemeanor defined, 45-2-101.

Weed control — disposition of fines and inspection fees, 80-7-704.

7-22-2118 through 7-22-2120 reserved.

7-22-2121. Weed management program. (1) The noxious weed management program must be based on a plan approved by the board.

(2) The noxious weed management plan must:

(a) specify the goals and priorities of the program;

(b) review the distribution and abundance of each noxious weed species known to occur within the district and specify the locations of new infestations and areas particularly susceptible to new infestations;

(c) specify pesticide management goals and procedures, including but not limited to water quality protection, public and worker safety, equipment selection and maintenance, and pesticide selection, application, mixing, loading, storage, and disposal; and

(d) estimate the personnel, operations, and equipment costs of the proposed program.

(3) The board shall provide for the management of noxious weeds on all land or rights-of-way owned or controlled by a county or municipality within the confines of the district. It shall take particular precautions while managing the noxious weeds to preserve beneficial vegetation and wildlife habitat. Where at all possible, methods for such control shall include cultural, chemical, and biological methods.

(4) The board may establish special management zones within the district. The management criteria in such zones may be more or less stringent than the general management criteria for the district.

History: En. Sec. 15, Ch. 195, L. 1939; amd. Sec. 5, Ch. 90, L. 1941; amd. Sec. 6, Ch. 228, L. 1947; amd. Sec. 1, Ch. 68, L. 1973; amd. Sec. 4, Ch. 360, L. 1974; R.C.M. 1947, 16-1719(part); amd. Sec. 9, Ch. 607, L. 1985; amd. Sec. 2, Ch. 530, L. 1991.

Cross-References

Weed control — technical assistance, 80-7-711.

Funding of noxious plant management programs, 80-7-712.

7-22-2122. Repealed. Sec. 32, Ch. 607, L. 1985.

History: En. Sec. 9, Ch. 195, L. 1939; amd. Sec. 1, Ch. 90, L. 1941; amd. Sec. 2, Ch. 228, L. 1947; amd. Sec. 1, Ch. 51, L. 1961; amd. Sec. 1, Ch. 64, L. 1965; amd. Sec. 2, Ch. 185, L. 1969; amd. Sec. 3, Ch. 360, L. 1974; R.C.M. 1947, 16-1713(part).

7-22-2123. Procedure in case of noncompliance. (1) Where complaint has been made or the board has reason to believe that noxious weeds described in this part are present upon a person's land within the district in violation of the law, that person must be notified by mail or telephone of the complaint and the board may request inspection of such land. The board or its authorized agent and the landowner or his representative shall inspect the land at an agreeable time, within 10 days of notification of the landowner. If after reasonable effort the board is unable to gain cooperation of the person, the board or its authorized agent may enter and inspect the land to determine if the complaint is valid.

(2) If noxious weeds are found, the board or supervisor shall notify the person or his representative and seek voluntary compliance with the district weed control program. If voluntary compliance is not possible, notice of noncompliance must be sent to the person by certified mail.

(3) The notice must specify:

(a) the basis for the determination of noncompliance;

(b) the geographic location of the area of noncompliance, by legal description or other reasonably identifiable description;

(c) measures to be undertaken in order to comply with the district's management criteria;

(d) a reasonable period of time, not less than 10 days, in which compliance measures must be initiated; and

(e) the right of the person to request, within the time specified in subsection (3)(d), an administrative hearing as provided by 7-22-2110.

(4) A person is considered in compliance if he submits and the board accepts a proposal to undertake specified control measures and is in compliance for so long as he performs according to the terms of the proposal. If the measures proposed to be taken extend beyond the current growing season, the proposal and acceptance must be in writing.

(5) In accepting or rejecting a proposal, the board shall consider the economic impact on the person and his neighbors, practical biological and environmental limitations, and alternative control methods to be used.

History: (1)En. Sec. 9, Ch. 195, L. 1939; amd. Sec. 1, Ch. 90, L. 1941; amd. Sec. 2, Ch. 228, L. 1947; amd. Sec. 1, Ch. 51, L. 1961; amd. Sec. 1, Ch. 64, L. 1965; amd. Sec. 2, Ch. 185, L. 1969; amd. Sec. 3, Ch. 360, L. 1974; Sec. 16-1713, R.C.M. 1947; (2)En. Sec. 10, Ch. 195, L. 1939; amd. Sec. 2, Ch. 90, L. 1941; Sec. 16-1714, R.C.M. 1947; R.C.M. 1947, 16-1713(part), 16-1714; amd. Sec. 13, Ch. 607, L. 1985; amd. Sec. 1, Ch. 141, L. 1987.

Cross-References

Construction of term — written notice, 1-4-108.

Weed control — technical assistance, 80-7-711.

7-22-2124. Destruction of weeds by board. (1) If corrective action is not taken and no proposal is made and accepted or no request for an administrative hearing is made within the time specified in the notice, the board may forthwith enter upon the person's land and institute appropriate control measures. In such case the board shall submit a bill to the person, itemizing man-hours of labor, material, and equipment time, together with a penalty not exceeding 10% of the total cost incurred. Labor and equipment must be valued at the current rate paid for commercial management operations in the district. The bill must specify and order a payment due date of 30 days from the date the bill is sent.

(2) A copy of the bill must also be submitted by the board to the county clerk and recorder.

(3) If a person receiving an order to take corrective action requests an administrative hearing, the board may not institute control measures until the matter is finally resolved, except in case of an emergency. In such a case, the person is liable for costs as provided in subsection (1) only to the extent determined appropriate by the board, commissioners, or court that finally resolves the matter.

History: **En. Sec. 11, Ch. 195, L. 1939; amd. Sec. 3, Ch. 90, L. 1941; amd. Sec. 3, Ch. 228, L. 1947; R.C.M. 1947, 16-1715(part); amd. Sec. 14, Ch. 607, L. 1985; amd. Sec. 2, Ch. 141, L. 1987.**

Cross-References

Role and duties of County Clerk, 7-4-2611.

Employment of personnel by County Commissioners, 7-5-2107.

Weed control — rules, 80-7-714.

7-22-2125. Repealed. Sec. 32, Ch. 607, L. 1985.

History: **En. Sec. 12, Ch. 195, L. 1939; amd. Sec. 4, Ch. 228, L. 1947; R.C.M. 1947, 16-1716.**

7-22-2126. Embargo. (1) The board may establish voluntary embargo programs to reduce the spread of noxious weeds within the district or the introduction of noxious weeds into the district.

(2) The board shall establish a special embargo program for the movement of forage, as defined in 80-7-903, into or out of the county. The board may implement an embargo upon confirmation of a violation, based upon complaint investigations, requests for investigation by the department, or through county investigations, if the forage has not been certified by the state and is being sold as noxious weed seed free, as defined in 80-7-903.

(3) A person in possession of the forage that is not in compliance with Title 80, chapter 7, part 9, may not move or dispose of the forage as noxious weed seed free that is subject to embargo until written permission is obtained from the board. If the forage that is subject to embargo is found to have met all of the requirements of the state certification program and the department verifies compliance with the program, the board shall release the embargo. The board may also release the forage under the following conditions:

(a) verification of guaranteed delivery back to the original producer, as defined in 80-7-903;

(b) burning or disposal of the forage in a manner acceptable to the board; or

(c) other alternatives approved by the board.

(4) The board shall report all embargoes issued and the final resolution of an embargo imposed pursuant to a violation of Title 80, chapter 7, part 9, to the department within 48 hours.

(5) The person in possession of forage subject to embargo shall comply with the conditions approved by the board within 30 days. If resolution is not accomplished, the board may condemn the forage and implement through its employees any of the conditions set forth in this section. If the board proceeds with correction of these conditions after 30 days, all actual expenses incurred and documented by the board are payable by the producer unless the person in possession of the forage also has an interest in the forage.

History: **En. Sec. 3, Ch. 195, L. 1939; R.C.M. 1947, 16-1707; amd. Sec. 16, Ch. 607, L. 1985; amd. Sec. 17, Ch. 521, L. 1995.**

Compiler's Comments

1995 Amendment: Chapter 521 inserted (2) requiring the board to establish an embargo program for the movement of forage and allowing embargoes; inserted (3) relating to moving forage that is not in compliance with Title 80, chapter 7, part 9, and to release of the embargo under certain stated conditions; inserted (4) requiring the board to report embargo information to the Department; and inserted (5) relating to compliance with board conditions, condemnation of forage, board implementation of conditions, and payment of board expenses. Amendment effective January 1, 1996.

Cross-References

Embargo against introduction of noxious weed seed from other states, 80-7-701.

7-22-2127. Repealed. Sec. 32, Ch. 607, L. 1985.

History: En. Sec. 14, Ch. 195, L. 1939; amd. Sec. 5, Ch. 228, L. 1947; R.C.M. 1947, 16-1718.

7-22-2128 and 7-22-2129 reserved.

7-22-2130. Weed district supervisor training. Within the limitations of available funds, the board shall ensure that the weed district supervisor obtains training to properly implement the noxious weed management program described in 7-22-2121. The department shall specify through rulemaking the level and type of training necessary to fulfill this requirement.

History: En. Sec. 1, Ch. 530, L. 1991.

7-22-2131 through 7-22-2140 reserved.

7-22-2141. Noxious weed fund authorized. (1) The commissioners of each county in this state shall create a noxious weed management fund, to be designated the "noxious weed fund".

(2) This fund shall be kept separate and distinct by the county treasurer.

History: En. Sec. 13, Ch. 195, L. 1939; amd. Sec. 4, Ch. 90, L. 1941; amd. Sec. 7, Ch. 228, L. 1947; amd. Sec. 1, Ch. 63, L. 1955; R.C.M. 1947, 16-1717(part); amd. Sec. 17, Ch. 607, L. 1985.

Cross-References

Office of County Treasurer, 7-4-3002; Title 7, ch. 6, part 21.

General authority of County Commissioners, 7-5-2101.

7-22-2142. Sources of money for noxious weed fund. (1) The commissioners may create the noxious weed fund and provide sufficient money in the fund for the board to fulfill its duties, as specified in 7-22-2109, by:

(a) appropriating money from the general fund of the county;

(b) at any time fixed by law for levy and assessment of taxes, levying a tax not exceeding 2 mills on the dollar of total taxable valuation in the county. The tax levied under this subsection must be identified on the assessment as the tax that will be used for noxious weed control.

(c) levying a tax in excess of 2 mills if authorized by a majority of the qualified electors voting in an election held for this purpose pursuant to 7-6-2531 through 7-6-2536.

(2) The proceeds of the noxious weed control tax must be used solely for the purpose of managing noxious weeds in the county and must be designated to the noxious weed fund.

(3) Any proceeds from work or chemical sales must revert to the noxious weed fund and must be available for reuse within that fiscal year or any subsequent year.

(4) The commissioners may accept any private, state, or federal gifts, grants, contracts, or other funds to aid in the management of noxious weeds within the district. These funds must be placed in the noxious weed fund.

History: En. Sec. 13, Ch. 195, L. 1939; amd. Sec. 4, Ch. 90, L. 1941; amd. Sec. 7, Ch. 228, L. 1947; amd. Sec. 1, Ch. 63, L. 1955; R.C.M. 1947, 16-1717(part); amd. Sec. 18, Ch. 607, L. 1985; amd. Sec. 3, Ch. 530, L. 1991.

Cross-References

Authorization for county mill levy, 7-6-2501.

Incorporation of property tax levy into county all-purpose levy, 7-6-2523.

Funding of noxious plant management programs, 80-7-712.

7-22-2143. Determination of cost of weed control program. Based on the board's recommendations, the commissioners shall determine and fix the cost of the control of noxious weeds in the district, whether the same be performed by the individual landowners or by the board.

History: En. Sec. 16, Ch. 195, L. 1939; amd. Sec. 6, Ch. 90, L. 1941; amd. Sec. 8, Ch. 228, L. 1947; R.C.M. 1947, 16-1720(part); amd. Sec. 19, Ch. 607, L. 1985; amd. Sec. 4, Ch. 530, L. 1991.

Cross-References

General authority of County Commissioners, 7-5-2101.

7-22-2144. Payment of cost of weed control program. The total cost of such control shall be paid from the noxious weed fund. The cost of controlling such weeds growing along the right-of-way of a state or federal highway shall, upon the presentation by the board of a verified account of the expenses incurred, be paid from the state highway fund in compliance with 7-14-2132 and any agreement between the board and the department of transportation. Costs attributed to other lands within the district shall be assessed to and collected from the responsible person as set forth in 7-22-2116.

History: En. Sec. 15, Ch. 195, L. 1939; amd. Sec. 5, Ch. 90, L. 1941; amd. Sec. 6, Ch. 228, L. 1947; amd. Sec. 1, Ch. 68, L. 1973; amd. Sec. 4, Ch. 360, L. 1974; R.C.M. 1947, 16-1719(part); amd. Sec. 20, Ch. 607, L. 1985; amd. Sec. 3, Ch. 512, L. 1991.

Cross-References

Fund structure, 17-2-102.

Highway maintenance agreements with local governments, 60-2-204.

Distribution and apportionment of highway funds, Title 60, ch. 3.

7-22-2145. Expenditures from noxious weed fund. (1) The noxious weed fund must be expended by the commissioners at the time and in the manner as is recommended by the board to secure the control of noxious weeds.

(2) Warrants upon the fund must be drawn by the board. Warrants may not be drawn except upon claims duly itemized by the claimant, except payroll claims that must be itemized and certified by the board, and each claim must be presented to the commissioners for approval before the warrant is countersigned by the commissioners.

History: En. Sec. 13, Ch. 195, L. 1939; amd. Sec. 4, Ch. 90, L. 1941; amd. Sec. 7, Ch. 228, L. 1947; amd. Sec. 1, Ch. 63, L. 1955; R.C.M. 1947, 16-1717(part); amd. Sec. 21, Ch. 607, L. 1985; amd. Sec. 5, Ch. 530, L. 1991.

Cross-References

General authority of County Commissioners, 7-5-2101.

County warrants, Title 7, ch. 6, part 26.

7-22-2146. Financial assistance to persons responsible for weed control. (1) The commissioners, upon recommendation of the board, may establish cost-share programs with any person, specifying costs that may be paid from the noxious weed fund and costs that must be paid by the person. Cost-share programs may be established for special projects and for established management zones.

(2) (a) When under the terms of any voluntary agreement, whether entered into pursuant to 7-22-2123 or otherwise, or under any cost-share program entered pursuant to this section a person incurs any obligation for materials or services provided by the board, the board shall submit a bill to the person, itemizing man-hours of labor, material, and equipment time. The bill

must specify and order a payment due date not less than 30 days from the date the bill is sent.

(b) A copy of the bill must be submitted by the board to the county clerk and recorder. If the sum to be repaid by the person billed is not repaid on or before the date due, the county clerk and recorder shall certify the amount thereof, with the description of the land to be charged, and shall enter the sum on the assessment list as a special tax on the land, to be collected in the manner provided in 7-22-2148.

History: En. Sec. 16, Ch. 195, L. 1939; amd. Sec. 6, Ch. 90, L. 1941; amd. Sec. 8, Ch. 228, L. 1947; R.C.M. 1947, 16-1720(part); amd. Sec. 22, Ch. 607, L. 1985.

Cross-References

Funding of noxious plant management programs, 80-7-712.

7-22-2147. Repealed. Sec. 32, Ch. 607, L. 1985.

History: En. Sec. 16, Ch. 195, L. 1939; amd. Sec. 6, Ch. 90, L. 1941; amd. Sec. 8, Ch. 228, L. 1947; R.C.M. 1947, 16-1720(part).

7-22-2148. Tax liability for payment of weed control expenses. (1) The expenses referred to in 7-22-2124 shall be paid by the county out of the noxious weed fund, and unless the sum to be repaid by the person billed under 7-22-2124 is repaid on or before the date due, the county clerk shall certify the amount thereof, with the description of the land to be charged, and shall enter the same on the assessment list of the county as a special tax on the land. If the land for any reason is exempt from general taxation, the amount of such charge may be recovered by direct claim against the lessee and collected in the same manner as personal taxes. When such charges are collected, they shall be credited to the noxious weed fund.

(2) In determining what lands are included as land covered by the special tax and are described in the certificate of the county clerk, it is presumed that all work done upon any of the land of any one landowner is for the benefit of all of the land within the district belonging to the owner, together with the parcel upon which the work was done, and the amount certified becomes a tax upon the whole thereof.

History: En. Sec. 11, Ch. 195, L. 1939; amd. Sec. 3, Ch. 90, L. 1941; amd. Sec. 3, Ch. 228, L. 1947; R.C.M. 1947, 16-1715(part); amd. Sec. 17, Ch. 249, L. 1979; amd. Sec. 23, Ch. 607, L. 1985; amd. Sec. 6, Ch. 530, L. 1991.

Cross-References

Role and duties of County Clerk, 7-4-2611.

Duties of County Clerk related to taxation, 7-6-2504.

7-22-2149. Responsibility for assessments and taxes for weed control levied on leased state lands. The lessee of agricultural state land is responsible for assessments and taxes levied by the board of county commissioners for the district as provided in 77-6-114.

History: En. Sec. 11, Ch. 195, L. 1939; amd. Sec. 3, Ch. 90, L. 1941; amd. Sec. 3, Ch. 228, L. 1947; R.C.M. 1947, 16-1715(part).

Cross-References

County taxation, Title 7, ch. 6, part 25.

7-22-2150. Cooperation with state and federal-aid programs. The board is empowered to cooperate with any state or federal-aid program that becomes available. Under such a plan of cooperation, the direction of the program shall be under the direct supervision of the board of the district in which the program operates.

History: En. Sec. 17, Ch. 195, L. 1939; amd. Sec. 9, Ch. 228, L. 1947; R.C.M. 1947, 16-1721; amd. Sec. 24, Ch. 607, L. 1985.

Cross-References

Federal assistance management, Title 17, ch. 3, part 1.

Endowments, Title 17, ch. 3, part 10.

Funding of noxious plant management programs, 80-7-712.

7-22-2151. Cooperative agreements. (1) A state agency that controls land within a district, including the department of transportation; the department of fish, wildlife, and parks; the department of corrections; the department of natural resources and conservation; and the university system, shall enter into a written agreement with the board. The agreement must specify mutual responsibilities for integrated noxious weed management on state-owned or state-controlled land within the district. The agreement must include the following:

(a) a 6-year integrated noxious weed management plan, which must be updated biennially;

(b) a noxious weed management goals statement;

(c) a specific plan of operations for the biennium, including a budget to implement the plan; and

(d) a provision requiring a biennial performance report by the board to the state weed coordinator in the department of agriculture, on a form to be provided by the state weed coordinator, regarding the success of the plan.

(2) The board and the governing body of each incorporated municipality within the district shall enter into a written agreement and shall cooperatively plan for the management of noxious weeds within the boundaries of the municipality. The board may implement management procedures described in the plan within the boundaries of the municipality for noxious weeds only. Control of nuisance weeds within the municipality remains the responsibility of the governing body of the municipality, as specified in 7-22-4101.

(3) A board may develop and carry out its noxious weed management program in cooperation with boards of other districts, with state and federal governments and their agencies, or with any person within the district. The board may enter into cooperative agreements with any of these parties.

(4) Each agency or entity listed in subsection (1) shall submit a statement or summary of all noxious weed actions that are subject to the agreement required under subsection (1) to the state weed coordinator and shall post a copy of the statement or summary on the state bulletin board.

History: En. Sec. 10, Ch. 607, L. 1985; amd. Sec. 1, Ch. 262, L. 1991; amd. Sec. 3, Ch. 512, L. 1991; amd. Sec. 31, Ch. 418, L. 1995; amd. Sec. 1, Ch. 519, L. 1995; amd. Sec. 30, Ch. 546, L. 1995.

Compiler's Comments

1995 Amendments: Chapter 418 in (1) deleted reference to Department of State Lands; and made minor changes in style. Amendment effective July 1, 1995.

Chapter 519 in (1), in last full sentence of introductory clause after "responsibilities for", inserted "integrated" and inserted last clause; inserted (1)(a) through (1)(d) providing what the agreement must include; and inserted (4) requiring submission of a statement of noxious weed actions subject to the agreement and posting of a copy of the statement. Amendment effective July 1, 1995.

Chapter 546 in (1), in first sentence, substituted "department of corrections" for "department of corrections and human services". Amendment effective July 1, 1995.

Cross-References

Department of Natural Resources and Conservation established, 2-15-3301.

University system, Title 20, ch. 25.

Department of Transportation — general powers and duties, Title 60, ch. 2, part 2.

Department of Fish, Wildlife, and Parks — general powers and duties, Title 87, ch. 1, part 2.

7-22-2152. Revegetation of rights-of-way and disturbed areas. (1) Any state agency or local government unit approving a mine, major facility, transmission line, solid waste facility, highway, subdivision, or any other development resulting in significant disturbance of land within a district shall notify the board.

(2) Whenever any person or agency disturbs vegetation on an easement or right-of-way within a district by construction of a road, irrigation or drainage ditch, pipeline, transmission line, or other development, the board shall require that the disturbed areas be seeded, planted, or otherwise managed to reestablish a cover of beneficial plants.

(3) (a) The person or agency disturbing the land shall submit to the board a written plan specifying the methods to be used to accomplish revegetation. The plan must describe the time and method of seeding, fertilization practices, recommended plant species, use of weed-free seed, and the weed management procedures to be used.

(b) The plan is subject to approval by the board, which may require revisions to bring the revegetation plan into compliance with the district weed management plan. Upon approval by the board, the revegetation plan must be signed by the chairman of the board and the person or agency responsible for the disturbance and constitutes a binding agreement between the board and such person or agency.

History: En. Sec. 11, Ch. 607, L. 1985.

Cross-References

Highways, acquisition and disposition of property, Title 60, ch. 4.

Montana Environmental Policy Act, Title 75, ch. 1.

Montana Solid Waste Management Act, Title 75, ch. 10, part 2.

Major Facility Siting Act, Title 75, ch. 20.

Subdivisions, Title 76, ch. 2 and 3.

Mining on state lands, Title 77, ch. 3.

Coal mining, Title 82, ch. 3.

Oil and gas conservation, Title 82, ch. 11.

Hard-rock mining impact, Title 90, ch. 6, part 3.

7-22-2153. Voluntary agreements for control of noxious weeds along roads. (1) Any person may voluntarily seek to enter into an agreement for the management of noxious weeds along a state or county highway or road bordering or running through his land. The supervisor may draft such an agreement upon the request of and in cooperation with the person; however, the agreement must, in the board's judgment, provide for effective weed management. The weed management agreement must be signed by the person and, upon approval of the board, by the chairman. An agreement involving a state highway right-of-way must also be signed by a representative of the department of transportation.

(2) The agreement must contain a statement disclaiming any liability of the board and, if applicable, the department of transportation for any injuries or losses suffered by the person in managing noxious weeds on the state or county highway right-of-way. The signed agreement transfers responsibility for managing noxious weeds on the specified section of right-of-way from the

board to the person signing the agreement. If the board later finds that the person has failed to adhere to the agreement, the board shall issue an order informing the person that the agreement will be void and that responsibility for the management of noxious weeds on the right-of-way will revert to the board unless the person complies with the provisions of the agreement within a specified time period.

History: En. Sec. 12, Ch. 607, L. 1985; amd. Sec. 3, Ch. 512, L. 1991.

Cross-References

Department of Transportation, Title 60, ch. 2, part 2.

Part 22
Rodent Control Districts

Part Cross-References

County vertebrate pest management, Title 7, ch. 22, part 25.

Livestock — rodent control, Title 80, ch. 7, part 11.

7-22-2201 through 7-22-2206. Repealed. Sec. 21, Ch. 391, L. 1981.

Compiler's Comments

Histories of Repealed Sections:

7-22-2201. En. Sec. 1, Ch. 122, L. 1949; amd. Sec. 47, Ch. 310, L. 1974; amd. Sec. 2, Ch. 242, L. 1975; R.C.M. 1947, 16-1175(part).

7-22-2202. En. Sec. 1, Ch. 122, L. 1949; amd. Sec. 47, Ch. 310, L. 1974; amd. Sec. 2, Ch. 242, L. 1975; R.C.M. 1947, 16-1175(part).

7-22-2203. En. Sec. 4, Ch. 122, L. 1949; R.C.M. 1947, 16-1178(part).

7-22-2204. En. Sec. 3, Ch. 122, L. 1949; R.C.M. 1947, 16-1177.

7-22-2205. En. Sec. 2, Ch. 122, L. 1949; R.C.M. 1947, 16-1176.

7-22-2206. En. Sec. 4, Ch. 122, L. 1949; R.C.M. 1947, 16-1178(part).

7-22-2207. Definitions. As used in this part, unless the context indicates otherwise, the following definitions apply:

(1) "Board" means the rodent control board for a district.

(2) "Department" means the department of agriculture.

(3) "District" means a rodent control district created under the provisions of this part.

(4) "Fund" means the rodent control district fund authorized by 7-22-2221.

(5) "Governing body" means the governing body specified in the alternative form of government adopted by a county.

(6) "Rodent" means Columbia ground squirrel (Spermophilus columbianus), Richardson ground squirrel (Spermophilus richardsonii), Armatus ground squirrel (Spermophilus armatus), thirteen-striped ground squirrel (Spermophilus tridecemlineatus), pocket gopher (Thomomys, various species), field mice (Microtus, various species), and prairie dog (Cynomys ludovicianus).

History: En. Sec. 1, Ch. 391, L. 1981; amd. Sec. 1, Ch. 67, L. 1983.

7-22-2208. Application to state lands. This part applies to lands owned by the state.

History: En. Sec. 2, Ch. 391, L. 1981.

Cross-References

State Lands, Title 77.

7-22-2209. Application to leased land. Lessees of land within the district are liable for assessments and levies for rodent control and must comply with 7-22-2224 and 7-22-2225 unless the lease specifically forbids rodent control through chemical or other means.

History: En. Sec. 19, Ch. 391, L. 1981.

Cross-References

Agricultural, grazing, and other surface leases, Title 77, ch. 6.

7-22-2210. Rodent control districts authorized. The governing body of a county may create a district as provided in this part. A district may not contain any city or town.

History: En. Sec. 3, Ch. 391, L. 1981.

Cross-References

General authority of County Commissioners, 7-5-2101.

7-22-2211. Petition to create district — hearing. (1) The creation of a district may be initiated only by a petition:

(a) signed by at least 51% of the owners of land within the proposed district;

(b) submitted to the governing body of the county; and

(c) accompanied by sufficient funds to defray the cost of giving notice as required by 7-22-2212.

(2) The petition shall set forth the boundaries of the proposed district.

(3) Upon receipt of the petition, the governing body shall set a date for a hearing on the petition. The hearing must be held within 3 weeks of receipt of the petition.

History: En. Sec. 4, Ch. 391, L. 1981.

Cross-References

Notice and opportunity to be heard, Title 2, ch. 3, part 1.

7-22-2212. Notice of hearing. Upon setting a date for the hearing, the governing body shall give notice of the hearing in the following manner:

(1) notice is to be sent by certified mail to each owner of land within the proposed district at the last-known address as shown in the county records;

(2) notice is to be posted in at least three public places within the proposed district; and

(3) notice is to be published as provided in 7-1-2121.

History: En. Sec. 5, Ch. 391, L. 1981; amd. Sec. 30, Ch. 349, L. 1985.

Cross-References

Notice and opportunity to be heard, Title 2, ch. 3, part 1.

7-22-2213. Objection to district. (1) At any time up to and including the date of the hearing, a landowner may file written objection to the creation of the district with the county clerk. The county clerk shall note the time of receipt on the written protest and shall compute the percentage of land in the proposed district represented by the protesting landowner.

(2) If the owners of at least 51% of the land in the proposed district file written objections with the county clerk, the district may not be created.

History: En. Sec. 6, Ch. 391, L. 1981.

Cross-References

Role and duties of County Clerk, 7-4-2611.

7-22-2214. Hearing — decision. (1) On the date set for the hearing, the governing body shall hear comments on the proposed district. If objections have been filed by owners of at least 51% of the land within the district, the governing body shall deny the petition request and may not create the district. Prior to creating a district, the governing body shall make a finding that creation of the district is in the best interests of the district lands and residents. The decision on whether to grant or deny the petition request shall be made within 10 days of the hearing.

(2) The decision is to be made by an order recorded in the minutes of the governing body. If the district is to be created, the order shall state the name of the district, describe the district boundaries, and provide any other information needed to describe the land included within the district.

(3) A landowner within the proposed district after the initial boundaries have been established may, by petitioning the board of county commissioners, have all or a portion of the lands owned by himself removed from consideration for inclusion within the district. This landowner must, however, agree in writing to control rodents on his land within a 250-yard buffer zone of the district boundary.

History: En. Sec. 7, Ch. 391, L. 1981.

Cross-References

Informal disposition and hearings, 2-4-603.

7-22-2215. Rodent control board. A governing body creating a rodent control district shall appoint a rodent control board subject to the provisions of 7-1-201 through 7-1-203.

History: En. Sec. 8, Ch. 391, L. 1981; amd. Sec. 2, Ch. 67, L. 1983; amd. Sec. 28, Ch. 607, L. 1985; amd. Sec. 6, Ch. 681, L. 1991; amd. Sec. 19, Ch. 543, L. 1995.

Compiler's Comments

1995 Amendment: Chapter 543 at end inserted "subject to the provisions of 7-1-201 through 7-1-203"; and deleted former language that read: "The county extension agent is an ex officio member of the board. Each member of the board must be an elector and reside within the district.

(2) The governing body shall, at a public meeting, pass a resolution establishing the number of members on the board and the terms of the appointments. The board must consist of at least three members and no more than nine members, and the members of the board must be residents of the district.

(3) Each member of the board is entitled to:

(a) a mileage allowance as provided in 2-18-503 for the distance actually and necessarily traveled to perform official duties; and

(b) per diem expenses established by the governing body.

(4) The district weed board appointed under 7-22-2103 may be appointed by the governing body to also serve as the rodent control board, in which case the qualifications, terms, compensation, mileage, and expenses of the rodent control board are the same as those of the district weed board and subsections (1) through (3) do not apply."

7-22-2216. Board powers. (1) In addition to the powers and duties established in the resolution creating a rodent control board, the board may:

(a) develop and administer a program for the abatement and alleviation of rodent pest conditions within the district;

(b) employ assistants and employees as are necessary;

(c) purchase or lease equipment, material, or services as are considered necessary for an effective control program;

(d) sell or lease equipment, material, or services to district landowners or residents as are considered necessary to implement the rodent abatement program;

(e) cooperate with any corporation, association, group, individual, or state or federal agency in rodent abatement programs;

(f) receive gifts or grants for the implementation of a rodent abatement program; and

(g) enter district lands in order to survey and study conditions and to implement a rodent abatement program.

(2) The board shall cooperate with the department in the management and suppression of rodent pests and may enter into written agreements with the department.

History: En. Sec. 9, Ch. 391, L. 1981; amd. Sec. 3, Ch. 67, L. 1983; amd. Sec. 20, Ch. 543, L. 1995.

Compiler's Comments

1995 Amendment: Chapter 543 in (1), at beginning, inserted "In addition to the powers and duties established in the resolution creating a rodent control board"; and made minor changes in style.

7-22-2217 through 7-22-2220 reserved.

7-22-2221. Rodent control fund. (1) The governing body shall establish a special fund, to be known as the rodent control district fund, for each district in the county. Money in the fund may be expended only for district administrative costs and the expenses of establishing and implementing a rodent abatement program.

(2) The county treasurer is the administrator of the fund and shall draw warrants on the fund by order of the governing body. Warrants shall be ordered by the governing body when so requested by the board.

History: En. Sec. 10, Ch. 391, L. 1981.

Cross-References

Deposit and investment of public money, Title 7, ch. 6, part 2.

7-22-2222. Mill levy authorized. To administer and implement a rodent abatement program, the governing body may levy a tax, not to exceed 2 mills, on the taxable value of the horticultural, farming, grazing, forest, and railroad lands within the district. The proceeds of the levy are to be placed in the district fund.

History: En. Sec. 11, Ch. 391, L. 1981.

Cross-References

Authorization for county mill levy, 7-6-2501.

Purpose of additional mill levy to be stated, 7-6-2532.

7-22-2223. Financial operation. (1) Material, equipment, and services purchased or leased by the board are to be paid for by warrants drawn on the fund.

(2) Payment received for material, equipment, and services supplied by the board is to be deposited in the fund. Reimbursement payments as provided for in 7-22-2225 and penalties collected under 7-22-2226 are to be deposited in the fund.

History: En. Sec. 12, Ch. 391, L. 1981.

7-22-2224. Implementation of rodent control. (1) Whenever the board has reason to believe a rodent control problem exists, it shall inspect the affected land and may issue an order to the landowner to take the appropriate action. The order to the landowner may only require that affected lands be treated within a 250-yard buffer zone of the adjacent district lands.

(2) If the order is not obeyed in the time specified in the order, the board shall take the necessary steps to control the rodent problem. The expenses of the board in carrying out these measures shall be paid from the fund by the governing body.

History: En. Sec. 13, Ch. 391, L. 1981.

7-22-2225. Reimbursement of fund. (1) Whenever the board has undertaken rodent control pursuant to 7-22-2224, the landowner shall reimburse the fund for the expenses related to rodent control on his land. The board may, by written contract with the landowner, agree to extend the reimbursement over a period not to exceed 5 years.

(2) The agreement may provide for the reimbursement payments to be collected with property taxes, and in this case, the board shall inform the county clerk of the lands to be charged and the amount to be placed on the tax notice. Upon receipt of the payment, the county clerk shall deposit it in the fund.

History: En. Sec. 14, Ch. 391, L. 1981.

Cross-References

Contracts, Title 28, ch. 2 and 3.

7-22-2226. Penalty. (1) Any person who interferes with the board or its employees or agents is subject to a civil penalty not to exceed $100. The board may institute a court action to recover the penalty.

(2) Penalties assessed under this section are to be deposited in the fund.

History: En. Sec. 15, Ch. 391, L. 1981.

Cross-References

Receipt for money paid to County Treasurer, 7-6-2116.

7-22-2227 through 7-22-2230 reserved.

7-22-2231. Enlargement of district. A district may be enlarged upon presentation of a petition signed by at least 51% of the owners of the land in the area proposed to be annexed to the district. The provisions of 7-22-2211 through 7-22-2214 apply to the annexation petition, with the term "district" in those sections taken to mean the area proposed to be added.

History: En. Sec. 16, Ch. 391, L. 1981.

7-22-2232. Dissolution of district. (1) Upon receipt of a petition signed by the owners of at least 51% of the land in the district and after a hearing on the petition, a district may be dissolved by order of the governing body. Notice of the hearing is to be given by posting notice in at least three public places in the district and by publishing notice at least once in a newspaper of general circulation in the district. If the governing body finds it to be in the best interest of the district lands and residents to terminate the district, the governing body shall so order.

(2) The dissolution order shall provide for a termination date and for liquidating the district assets and liabilities. Any money remaining in the

district fund after all assets and liabilities have been liquidated shall be transferred to the county general fund.

History: En. Sec. 17, Ch. 391, L. 1981.

7-22-2233. Multicounty districts. A multicounty district may be created by interlocal agreement, as provided in Title 7, chapter 11, part 1, between the governing bodies of the counties involved.

History: En. Sec. 18, Ch. 391, L. 1981.

Part 23

County Control of Insect Pests

Part Cross-References

Control of diseases and insects in nurseries, Title 80, ch. 7, part 1.

Crop insect detection and management, Title 80, ch. 7, part 5.

7-22-2301. Destruction of insect pests authorized. The board of commissioners of any county of this state where there are any insect pests is hereby authorized and empowered to appoint some suitable person or persons whose duty it shall be, acting under the direction of the state department of agriculture, to poison, kill, catch, and exterminate insect pests within such county.

History: En. Sec. 1, Ch. 227, L. 1921; re-en. Sec. 4501, R.C.M. 1921; re-en. Sec. 4501, R.C.M. 1935; amd. Sec. 7, Ch. 433, L. 1975; R.C.M. 1947, 16-1149(part).

Cross-References

General authority of County Commissioners, 7-5-2101.

Insect detection, surveillance, and control programs, 80-7-502.

7-22-2302. Definition of term insect pest. The term "insect pest" as used in this part shall include grasshopper, cutworm, pale western cutworm, armyworm, chinch bug, and any other insect or arthropod generally recognized as a destroyer of grain, hay, range, and horticultural crops.

History: En. Sec. 5, Ch. 227, L. 1921; re-en. Sec. 4505, R.C.M. 1921; re-en. Sec. 4505, R.C.M. 1935; amd. Sec. 11, Ch. 433, L. 1975; R.C.M. 1947, 16-1153.

Cross-References

Crop insects — definitions, 80-7-501.

7-22-2303. Compensation of appointee. Any person appointed under the provisions of 7-22-2301 shall receive such compensation as the county commissioners agree to pay, with warrants in payment thereof drawn on the general fund.

History: En. Sec. 2, Ch. 227, L. 1921; re-en. Sec. 4502, R.C.M. 1921; amd. Sec. 1, Ch. 25, L. 1923; re-en. Sec. 4502, R.C.M. 1935; amd. Sec. 8, Ch. 433, L. 1975; R.C.M. 1947, 16-1150.

Cross-References

Employment of personnel by County Commissioners, 7-5-2107.

7-22-2304. Authority to enter private land. Any person appointed pursuant to 7-22-2301 to control insect pests may fly over or enter upon any farm, railroad right-of-way, grounds, or premises infested with such insect pests and poison, kill, catch, and exterminate the insect pests therein.

History: En. Sec. 1, Ch. 227, L. 1921; re-en. Sec. 4501, R.C.M. 1921; re-en. Sec. 4501, R.C.M. 1935; amd. Sec. 7, Ch. 433, L. 1975; R.C.M. 1947, 16-1149(part).

Cross-References

Insect detection, surveillance, and control programs, 80-7-502.

7-22-2305. Acquisition of supplies and equipment. The board of county commissioners of any county may from time to time purchase or contract to hire such quantities and amounts of poisons, traps, and other equipment necessary to poison, kill, catch, or exterminate such insect pests, and warrants in payment thereof shall be drawn on the general fund.

History: En. Sec. 3, Ch. 227, L. 1921; re-en. Sec. 4503, R.C.M. 1921; amd. Sec. 2, Ch. 25, L. 1923; re-en. Sec. 4503, R.C.M. 1935; amd. Sec. 9, Ch. 433, L. 1975; R.C.M. 1947, 16-1151.

Cross-References

General authority of County Commissioners, 7-5-2101.

7-22-2306. Financing of insect pest control program. (1) The governing body of the county shall annually determine the amount of the warrants drawn on the general fund for the purposes of controlling insect pests under a control program approved by the department of agriculture.

(2) In the succeeding year, the governing body shall levy a tax for the purpose of insect pest extermination sufficient to reimburse the general fund for the money paid out on the warrants. The tax shall be levied upon all the property in the county and shall not exceed 3 mills on each dollar of taxable value.

(3) If there is no money in the general fund with which to pay such warrants, they shall be registered and bear interest in the same manner as other county warrants. In this case, the interest shall be computed and added to the amount for which such tax is levied.

History: En. Sec. 4, Ch. 227, L. 1921; re-en. Sec. 4504, R.C.M. 1921; amd. Sec. 3, Ch. 25, L. 1923; re-en. Sec. 4504, R.C.M. 1935; amd. Sec. 10, Ch. 433, L. 1975; amd. Sec. 8, Ch. 362, L. 1977; amd. Sec. 37, Ch. 566, L. 1977; R.C.M. 1947, 16-1152.

Cross-References

Authorization for county mill levy, 7-6-2501.

Incorporation of property tax levy into county all-purpose levy, 7-6-2523.

Financing of crop insect control program, 80-7-504.

Part 24
Mosquito Control Districts

Part Cross-References

Mining — reclamation — mosquito breeding grounds, 82-4-336.

7-22-2401. Definitions. In this part the following definitions apply:

(1) "Board" means the mosquito control board for any district created under this part.

(2) "Commissioners" means the board of county commissioners of any county.

(3) "District" means any mosquito control district created under the provisions of this part.

(4) "Mosquito" means any insect belonging to the family Culicidae of the order Diptera.

(5) "Mosquito pest" means any group of mosquitoes which annoy man or his domestic animals or transmit any disease of man or of his domestic animals.

History: En. Sec. 1, Ch. 183, L. 1953; amd. Sec. 1, Ch. 337, L. 1973; R.C.M. 1947, 16-4201.

7-22-2402. Mosquito control districts authorized. The board of county commissioners of any county shall have the power to create one or more mosquito control districts within such county in the manner hereinafter provided.

History: En. Sec. 2, Ch. 183, L. 1953; R.C.M. 1947, 16-4202.

Cross-References

General authority of County Commissioners, 7-5-2101.

7-22-2403. Petition to create mosquito control district — hearing required. (1) When a petition, signed by not less than 25% of the qualified electors of the proposed district or 25% of the owners of any property within the boundaries whose names appear as property owners upon the last-completed assessment roll of the county in which the proposed district is situated, is presented to the board of commissioners of the county asking for the creation of a mosquito control district, the commissioners shall set a day for a hearing on the petition and order notice of the hearing to be given to all persons interested.

(2) The commissioners by resolution shall fix a time for a hearing upon the petition at not less than 2 or more than 4 weeks from the time of presentation of the petition unless additional time is needed to prepare a survey and study as authorized by this subsection. Before setting a time for a hearing, the commissioners may cause a survey and study of the area sought to be included in the district to be made by competent personnel and may submit a report of the study to the department of environmental quality for its review and recommendations.

History: (1)En. Sec. 3, Ch. 183, L. 1953; amd. Sec. 1, Ch. 226, L. 1955; amd. Sec. 2, Ch. 337, L. 1973; amd. Sec. 1, Ch. 399, L. 1975; Sec. 16-4203, R.C.M. 1947; (2)En. Secs. 4, 5, Ch. 183, L. 1953; amd. Secs. 3, 4, Ch. 337, L. 1973; amd. Secs. 2, 3, Ch. 399, L. 1975; Secs. 16-4204, 16-4205, R.C.M. 1947; R.C.M. 1947, 16-4203(1), 16-4204(1), 16-4205(part); amd. Sec. 18, Ch. 249, L. 1979; amd. Sec. 32, Ch. 418, L. 1995.

Compiler's Comments

1995 Amendment: Chapter 418 at end of (2) substituted "department of environmental quality" for "department of health and environmental sciences"; and made minor changes in style. Amendment effective July 1, 1995.

Cross-References

Resolution requirements, 7-5-121.

Determination of number of signatures required for petition, 7-5-134.

7-22-2404. Details relating to petition to create district. (1) The petition provided for in 7-22-2403 shall set forth the boundaries of the proposed district and request that the property within the boundaries be organized into a mosquito control district.

(2) Sufficient funds to defray the cost of mailing, publication, and posting of notice shall accompany the petition.

History: En. Sec. 3, Ch. 183, L. 1953; amd. Sec. 1, Ch. 226, L. 1955; amd. Sec. 2, Ch. 337, L. 1973; amd. Sec. 1, Ch. 399, L. 1975; R.C.M. 1947, 16-4203(part).

Cross-References

Petitions, 7-5-133 through 7-5-135.

7-22-2405. Inclusion of cities and towns within district. Such proposed district may include any incorporated or unincorporated city or town of the county.

History: En. Sec. 3, Ch. 183, L. 1953; amd. Sec. 1, Ch. 226, L. 1955; amd. Sec. 2, Ch. 337, L. 1973; amd. Sec. 1, Ch. 399, L. 1975; R.C.M. 1947, 16-4203(part).

Cross-References

Interlocal agreements, Title 7, ch. 11, part 1.

7-22-2406. Notice of hearing on petition to create district. (1) The commissioners shall cause notice of the hearing provided for in 7-22-2403 to be mailed as provided in 7-1-2122 to each nonresident owner and purchaser under contract for deed of taxable real and personal property within the proposed district.

(2) The commissioners shall cause notice to be posted in three public places within the district. Whenever the district is partly in one county and partly in another county, notice must be posted in each county but posting need not be in three places in each county.

(3) The commissioners shall also cause notice to be given of the time and place of the hearing and the methods of objection by publication as provided in 7-1-2121, in each county if the district is partly in one county and partly in another county.

History: En. Sec. 4, Ch. 183, L. 1953; amd. Sec. 3, Ch. 337, L. 1973; amd. Sec. 2, Ch. 399, L. 1975; R.C.M. 1947, 16-4204(part); amd. Sec. 19, Ch. 249, L. 1979; amd. Sec. 9, Ch. 526, L. 1983; amd. Sec. 31, Ch. 349, L. 1985.

Cross-References

Requirements for compliance with notice provisions, 2-3-104.

County printing contract, 7-5-2411.

7-22-2407. Notice to include information relating to protest. The notice shall state that any qualified elector or owner of property lying within the boundaries of the proposed district may appear before the board at the time of hearing and show cause why the district should not be created or may file his written objection to creation of the district at any time before the date of said hearing.

History: En. Sec. 4, Ch. 183, L. 1953; amd. Sec. 3, Ch. 337, L. 1973; amd. Sec. 2, Ch. 399, L. 1975; R.C.M. 1947, 16-4204(part).

Cross-References

Opportunity to submit views, 2-3-111.

7-22-2408. Hearing on petition to create district. (1) At the time fixed for said hearing, the commissioners shall determine whether or not the petition complies with the requirements hereinbefore set forth and whether or not the notice has been published and posted as required.

(2) At such hearing, the board must hear all competent and relevant testimony offered in support of or in opposition to said petition and creation of said district and shall also consider the written objections to the creation of the district.

(3) Except as provided in 7-22-2409, if the commissioners, upon such hearing, determine there has been compliance with all of the requirements herein set forth, they shall, by an order duly made and entered on their minutes,

declare the district created, setting forth the name and boundaries of the district and the description of land contained therein.

History: En. Sec. 5, Ch. 183, L. 1953; amd. Sec. 4, Ch. 337, L. 1973; amd. Sec. 3, Ch. 399, L. 1975; R.C.M. 1947, 16-4205(part).

Cross-References

Opportunity to submit views, 2-3-111.

Open meetings, Title 2, ch. 3, part 2.

General authority of County Commissioners, 7-5-2101.

7-22-2409. Adjournment of hearing. (1) The hearing may be adjourned for determination of facts, but an adjournment may not exceed 2 weeks in all from and after the date originally noticed and published for the hearing.

(2) (a) If at the time of the hearing the commissioners find that a geographical area desires exclusion from the area contained within the boundaries of the proposed district, the hearing may be adjourned to permit the commissioners to consult the department of environmental quality to determine if it would be advisable to exclude the geographical area from the district.

(b) Upon reconvening, the commissioners shall define and establish the boundaries that are advisable.

History: En. Sec. 5, Ch. 183, L. 1953; amd. Sec. 4, Ch. 337, L. 1973; amd. Sec. 3, Ch. 399, L. 1975; R.C.M. 1947, 16-4205(part); amd. Sec. 33, Ch. 418, L. 1995.

Compiler's Comments

1995 Amendment: Chapter 418 near end of (2)(a) substituted "department of environmental quality" for "department of health and environmental sciences"; and made minor changes in style. Amendment effective July 1, 1995.

7-22-2410. Protest to creation of district. (1) At the hearing provided for in 7-22-2403 or at any time following the first publication of notice of such hearing until the time of said hearing, any qualified elector or an owner of property within the proposed district may file his written objections to the creation of the district. Such objections shall be delivered to the county clerk, who shall endorse thereon the date of its receipt by him.

(2) If 51% or more of the qualified electors or of the owners of property within the boundaries of the proposed district file their written objections to the creation of such district, the commissioners shall not proceed with the creation of such district.

(3) If as the result of objections filed the commissioners in their discretion determine the question in doubt whether or not the creation of a district is to the best interest of an area and the residents therein, the commissioners may cause the issue to be determined by referendum at the next regular election.

History: En. Sec. 5, Ch. 183, L. 1953; amd. Sec. 4, Ch. 337, L. 1973; amd. Sec. 3, Ch. 399, L. 1975; R.C.M. 1947, 16-4205(part).

Cross-References

Opportunity to submit views, 2-3-111.

Role and duties of County Clerk, 7-4-2611.

7-22-2411. District to be governed by appointed mosquito control board. Upon the creation of any mosquito control district, the commissioners shall appoint a mosquito control board subject to the provisions of 7-1-201 through 7-1-203.

History: En. Sec. 7, Ch. 183, L. 1953; amd. Sec. 6, Ch. 337, L. 1973; amd. Sec. 5, Ch. 399, L. 1975; R.C.M. 1947, 16-4207(part); amd. Sec. 20, Ch. 249, L. 1979; amd. Sec. 7, Ch. 681, L. 1991; amd. Sec. 21, Ch. 543, L. 1995.

Compiler's Comments

1995 Amendment: Chapter 543 at end inserted "subject to the provisions of 7-1-201 through 7-1-203"; deleted (2) through (5) that read: "(2) Each member of the mosquito control board shall be an elector within the boundaries of the district.

(3) The commissioners shall, at a public meeting, pass a resolution establishing the number of members of the board and the terms of the appointments. The board must consist of at least three members and no more than nine members, and the members of the board must be residents of the district.

(4) The board is a body corporate and shall act as such, and the members are public officers.

(5) The health officer having jurisdiction in the proposed district, the sanitarian or a member of his staff, and the county extension agent, if the county has any or all such officers, are ex officio members of the board without vote"; and made minor changes in style.

Cross-References

County officers in general, Title 7, ch. 4, part 22.

General authority of County Commissioners, 7-5-2101.

Employment of personnel by County Commissioners, 7-5-2107.

7-22-2412. Repealed. Sec. 8, Ch. 681, L. 1991.

History: En. Sec. 7, Ch. 183, L. 1953; amd. Sec. 6, Ch. 337, L. 1973; amd. Sec. 5, Ch. 399, L. 1975; R.C.M. 1947, 16-4207(part).

7-22-2413. *(Temporary)* **Compensation.** All such board members shall serve without pay. The appointed members shall receive per diem as allowed by state law for each day when the board is actually in session and their necessary mileage as provided by law. *(Repealed October 1, 1996—sec. 25, Ch. 543, L. 1995.)*

History: En. Sec. 7, Ch. 183, L. 1953; amd. Sec. 6, Ch. 337, L. 1973; amd. Sec. 5, Ch. 399, L. 1975; R.C.M. 1947, 16-4207(part).

Cross-References

Compensation of county officers, 7-4-2501.

7-22-2414. *(Temporary)* **Organization of mosquito control board.** The members of the mosquito control board shall organize each year by choosing a chairman, who shall be from among the appointed members, and a secretary. *(Repealed October 1, 1996—sec. 25, Ch. 543, L. 1995.)*

History: En. Sec. 7, Ch. 183, L. 1953; amd. Sec. 6, Ch. 337, L. 1973; amd. Sec. 5, Ch. 399, L. 1975; R.C.M. 1947, 16-4207(part).

Cross-References

Duty of officers to complete official business, 7-4-2207.

7-22-2415. Powers of mosquito control board. In addition to the powers and duties established in the resolution creating a mosquito control board, may:

(1) develop and administer a program for the abatement and alleviation of mosquito pest conditions within the district;

(2) employ suitable and competent assistants and employees as may be necessary and provide for their compensation;

(3) purchase, rent, or execute leasing agreements for equipment and material as the board may determine to be necessary for carrying on an effective control program;

(4) cooperate with any corporation, association, individual, or group of individuals, including any agency of the federal or state governments, in a mosquito abatement program;

(5) receive gifts, grants, or donations for the purpose of advancing its program;

(6) take action as may be necessary or advisable to survey, control, modify, or abate any condition which may or does contribute to the existence of the mosquito pest and for this purpose enter upon any premises located within the district, through its members, employees, or agents.

History: En. Sec. 8, Ch. 183, L. 1953; R.C.M. 1947, 16-4208; amd. Sec. 22, Ch. 543, L. 1995.

Compiler's Comments

1995 Amendment: Chapter 543 in introductory clause, at beginning, substituted "In addition to the powers and duties established in the resolution creating a" for "The"; and made minor changes in style.

Cross-References

Employment of personnel by County Commissioners, 7-5-2107.

Written agreements for loan or lease of county tools and equipment, 7-8-2112.

7-22-2416. Implementation of mosquito control program. (1) Whenever there exists within the district any condition which unnecessarily contributes to the production of mosquitoes and in the judgment of the board it is reasonably feasible for the owner of the land on which such condition exists to remove, correct, or prevent the same, the board shall have the power to notify such landowner in writing to remove, correct, or destroy such condition within a reasonable time, to be specified in such notice, and to prevent the recurrence thereof.

(2) The board shall provide for a hearing whenever there is a condition upon the land in need of attention as provided for and in keeping with the provisions of this part. The board shall determine from the evidence presented at the hearing whether the above-mentioned condition does exist and shall order compliance in keeping with the provisions of this part. The landowner shall have the right of appeal, which appeal shall be conducted in the same manner as appeals in civil action.

History: En. Sec. 12, Ch. 183, L. 1953; R.C.M. 1947, 16-4212(a).

7-22-2417. Unlawful to interfere with mosquito control personnel. Any person who in any manner willfully interferes with the mosquito control board or its officers, agents, or employees in carrying out the provisions of this part shall be guilty of a misdemeanor and upon conviction thereof shall be fined not to exceed the sum of $100. If the court should so determine, such person shall also be subject to the requirement of giving a bond to keep the peace to prevent further interference with the work of said officials or their agents and employees.

History: En. Sec. 12, Ch. 183, L. 1953; R.C.M. 1947, 16-4212(b).

Cross-References

Classification of offenses, 45-1-201.

Misdemeanor defined, 45-2-101.

7-22-2418. Relationship of mosquito control districts and boards with department of environmental quality and department of agriculture. (1) The department of environmental quality shall advise the commissioners of a county with regard to the creation of mosquito control districts within the county and upon request advise the boards of the districts in connection with their control programs.

(2) On or before February 1 of each year, the board of each district shall submit to the department of environmental quality and the department of agriculture, for their review and advice, a written report of its operations for

the preceding year and a written plan covering its control program for the ensuing year.

History: En. Sec. 9, Ch. 183, L. 1953; amd. Sec. 1, Ch. 2, L. 1969; amd. Sec. 7, Ch. 337, L. 1973; R.C.M. 1947, 16-4209; amd. Sec. 34, Ch. 418, L. 1995.

Compiler's Comments

1995 Amendment: Chapter 418 in (1) and (2) substituted "department of environmental quality" for "department of health and environmental sciences"; and made minor changes in style. Amendment effective July 1, 1995.

7-22-2419. Establishment and operation of joint mosquito control districts. (1) Joint mosquito control districts (that is, districts which lie partly in one county and partly in another) may be created or dissolved in the same manner as provided in this part for other districts, except that in such cases all petitions must be directed to the commissioners of each county affected and must be acted upon by them concurrently.

(2) In the case of such districts, the mosquito control board shall be constituted in the same manner and shall have the same powers as are provided for other boards in this part, except that appointments shall be made by joint action of the commissioners in all counties affected and each county shall be represented among the appointed members of the board. The county health officer, county sanitarian, and county extension agent of each county shall be ex officio members of the board without vote.

History: En. Sec. 13, Ch. 183, L. 1953; R.C.M. 1947, 16-4213(part).

Cross-References

Interlocal agreements, Title 7, ch. 11, part 1.

7-22-2420. Scope of part. Insofar as the provisions of this part are inconsistent with the provisions of any other law, the provisions of this part shall be controlling.

History: En. Sec. 14, Ch. 183, L. 1953; R.C.M. 1947, 16-4214.

7-22-2421 through 7-22-2430 reserved.

7-22-2431. Mosquito control fund. (1) The board of county commissioners of any county within which a mosquito control board has been created shall establish a mosquito control fund.

(2) Warrants upon such fund shall be drawn by the board of county commissioners upon the presentation of claims approved by the mosquito control board.

History: En. Sec. 10, Ch. 183, L. 1953; amd. Sec. 1, Ch. 22, L. 1969; R.C.M. 1947, 16-4210(part).

Cross-References

General authority of County Commissioners, 7-5-2101.

Deposit of public funds, 7-6-201.

Authorization for county mill levy, 7-6-2501.

7-22-2432. Financing of mosquito control district — levy of district taxes — limit on mill levy — fee on structures. (1) The board of county commissioners of any county within which a mosquito control board has been created shall finance the operation of the district by levying a tax not exceeding 5 mills on the dollar of the total taxable valuation in the district on all property situated within the district at the time fixed by law for levy and assessment of taxes.

(2) Instead of or in addition to imposing the levy authorized in subsection (1), the county commissioners may, upon an affirmative vote of a majority of the qualified voters residing in the mosquito control district, collect an annual fee from the owners of structures that are benefited by the mosquito control services offered by the district. The schedule of fees is as follows:

(a) up to $20 per single-unit dwelling;

(b) up to $20 per unit in a duplex dwelling;

(c) up to $5 per unit in a multiple-unit dwelling;

(d) up to $75 per commercial establishment;

(e) up to $50 on each irrigated parcel of property that does not contain a dwelling; and

(f) up to $15 on each nonirrigated parcel of property that does not contain a dwelling.

(3) A countywide mosquito control district may be financed by a property tax pursuant to subsection (1) or a fee under subsection (2), but not by both a tax and a fee.

(4) The fees provided for in subsection (2) must be collected with the general taxes of the county. The assessments are a lien on the property assessed.

(5) The proceeds from the tax and the fees must be placed in a separate fund with the county treasurer of the county and must be used solely for the purpose for which the mosquito control district was created.

History: En. Sec. 10, Ch. 183, L. 1953; amd. Sec. 1, Ch. 22, L. 1969; R.C.M. 1947, 16-4210(part); amd. Sec. 1, Ch. 782, L. 1991.

Cross-References

County taxation, Title 7, ch. 6, part 25.

7-22-2433. Tax levy for joint mosquito control districts. The annual tax levy for joint mosquito control districts, if any, shall be made by agreement of the commissioners of all counties affected and shall apply uniformly throughout such joint districts.

History: En. Sec. 13, Ch. 183, L. 1953; R.C.M. 1947, 16-4213(part).

Cross-References

County taxation, Title 7, ch. 6, part 25.

7-22-2434. Disposition of fines, bonds, and penalties. All fines, forfeited bonds, and penalties collected under the provisions of this part, except those collected by a justice's court, shall be paid to the county treasurer of each county and placed by him to the credit of the mosquito control fund.

History: En. Sec. 12, Ch. 183, L. 1953; R.C.M. 1947, 16-4212(c); amd. Sec. 5, Ch. 557, L. 1987.

Cross-References

Collection and disposition of fines, penalties, forfeitures, and fees collected by a Justice's Court, 3-10-601.

Duties of County Treasurer, 7-6-2111.

Receipt for money paid to County Treasurer, 7-6-2116.

7-22-2435 through 7-22-2440 reserved.

7-22-2441. Annexation of land to mosquito control district. Any such district at any time subsequent to its creation may be enlarged to include adjacent land upon the presentation to the board of county commissioners of a petition signed by not less than 25% of the electors within the adjacent land or

25% of the owners of any property lying within the boundaries of the area proposed to be annexed to the district whose names appear as such property owners upon the last-completed assessment role of the county in which the said proposed area is situated.

History: **En. Sec. 6, Ch. 183, L. 1953; amd. Sec. 5, Ch. 337, L. 1973; amd. Sec. 4, Ch. 399, L. 1975; R.C.M. 1947, 16-4206(part).**

Cross-References

Petitions, 7-5-133 through 7-5-135.

7-22-2442. Hearing on petition for annexation — notice. If any such petition for enlargement of an existing district is presented, the board of county commissioners shall set a time for hearing thereon and shall cause notice thereof to be given in the manner provided by 7-22-2406 and 7-22-2407.

History: **En. Sec. 6, Ch. 183, L. 1953; amd. Sec. 5, Ch. 337, L. 1973; amd. Sec. 4, Ch. 399, L. 1975; R.C.M. 1947, 16-4206(part).**

7-22-2443. Decision on petition for annexation. (1) Except as provided in subsection (2), if, upon the hearing provided for in 7-22-2442, the commissioners believe it to be to the best interests of the area and those resident therein that such area be annexed to the district, they shall, by an order duly made and entered on their minutes, declare the area in question to be annexed to the district, and such annexed area shall thenceforth be considered a part of such district for all purposes as originally included therein.

(2) (a) If 51% or more of the qualified electors or of the property owners in the area proposed to be annexed to the district file their objections to the creation of such district, the commissioners shall not act on such petition.

(b) If as a result of objections filed the commissioners in their discretion determine the question in doubt whether or not the annexation of the area is to the best interest of the area and of the residents therein, the commissioners may cause the issue to be decided by referendum at the next regular election.

History: **En. Sec. 6, Ch. 183, L. 1953; amd. Sec. 5, Ch. 337, L. 1973; amd. Sec. 4, Ch. 399, L. 1975; R.C.M. 1947, 16-4206(part).**

Cross-References

Final orders — notification — availability, 2-4-623.

Submission of question to electors, 7-5-136.

7-22-2444. Effect of annexation. If such additional area is added, such territory shall be subject to the tax authorized by this part together with the preexisting area of the district. Such tax shall be uniform for the area added and the territory in the district as enlarged.

History: **En. Sec. 6, Ch. 183, L. 1953; amd. Sec. 5, Ch. 337, L. 1973; amd. Sec. 4, Ch. 399, L. 1975; R.C.M. 1947, 16-4206(part).**

7-22-2445. Dissolution of mosquito control district. A mosquito control district may be dissolved upon presentation to the board of county commissioners of a petition signed by at least 51% of the qualified electors or of the property owners within the district.

History: **En. Sec. 11, Ch. 183, L. 1953; amd. Sec. 8, Ch. 337, L. 1973; amd. Sec. 6, Ch. 399, L. 1975; R.C.M. 1947, 16-4211(part).**

Cross-References

Petitions, 7-5-133 through 7-5-135.

7-22-2446. Hearing on petition for dissolution — notice. Upon the filing of a petition for dissolution, the board of county commissioners shall set a time for hearing the petition and shall cause notice thereof to be mailed as provided in 7-1-2122 to all nonresident property owners and purchasers under contracts for deed within the district whose addresses are known, to be posted in at least three public places within the district, and to be published as provided in 7-1-2121. Whenever the district is partly in one county and partly in another county, notice must be posted in each county, but posting need not be in three places in each county, and notice must be published in each county.

History: En. Sec. 11, Ch. 183, L. 1953; amd. Sec. 8, Ch. 337, L. 1973; amd. Sec. 6, Ch. 399, L. 1975; R.C.M. 1947, 16-4211(part); amd. Sec. 21, Ch. 249, L. 1979; amd. Sec. 10, Ch. 526, L. 1983; amd. Sec. 32, Ch. 349, L. 1985.

7-22-2447. Decision on petition for dissolution. The commissioners shall enter upon their minutes an order dissolving such district if, upon the hearing provided for in 7-22-2446, the commissioners find:

(1) such petition to be sufficient;

(2) that the district is not indebted in any amount beyond the funds immediately available to extinguish all of its debts and obligations; and

(3) that there is good reason for the dissolution of such district.

History: En. Sec. 11, Ch. 183, L. 1953; amd. Sec. 8, Ch. 337, L. 1973; amd. Sec. 6, Ch. 399, L. 1975; R.C.M. 1947, 16-4211(part).

Cross-References

Certain records to be kept by Board, 7-5-2129.

7-22-2448. Effect of dissolution. (1) The effective date of such dissolution shall be set by the commissioners at such time within the fiscal year as best conforms with the operations of the county budget, provided that before the dissolution shall be effective for all purposes, the mosquito control board of the district shall certify to the commissioners that all debts and obligations of the district have been paid, discharged, or irrevocably settled, together with legal proof thereof.

(2) (a) Any funds unexpended at the dissolution of a district shall be paid over into the county general fund. Where the district is partly in one county and partly in another county, the funds shall be apportioned between the counties and such apportionment shall be based on the taxable value of the property which is within the district.

(b) Physical assets may be liquidated as provided for in 7-8-2211 through 7-8-2220. Where the district is partly in one county and partly in another county, the proceeds of the sale of physical assets will be apportioned in like manner as the liquid assets.

History: En. Sec. 11, Ch. 183, L. 1953; amd. Sec. 8, Ch. 337, L. 1973; amd. Sec. 6, Ch. 399, L. 1975; R.C.M. 1947, 16-4211(part).

Cross-References

Authorization to sell county property, 7-8-2211.

Part 25
County Vertebrate Pest Management

7-22-2501. Definitions. As used in this part, the following definitions apply:

(1) "Department" means the department of agriculture.

(2) "Governing body" means the governing body specified by the form of government adopted by a county.

(3) "Management of vertebrate pests" means the correct identification of a vertebrate pest; recognition of its biological and environmental needs; assessment of the pest's damage, injury, or nuisance to agriculture, industry, or the public prior to selecting and implementing any integrated or individual control methods to reduce, prevent, or suppress such damage, nuisance, or injury; and evaluating the effects of these control methods.

(4) "Vertebrate pests" means jackrabbits, prairie dogs, ground squirrels, pocket gophers, rats, mice, skunks, raccoons, bats, and the following depredatory and nuisance birds: blackbirds, cowbirds, starlings, house sparrows, and feral pigeons, when such animals and birds are injurious to agriculture, other industries, or the public.

History: En. Sec. 4, Ch. 67, L. 1983; amd. Sec. 10, Ch. 67, L. 1983.

Cross-References

Department of Agriculture, Title 2, ch. 15, part 30.

7-22-2502. Establishment of program — cooperation. (1) A governing body may establish a program to manage and suppress vertebrate pests.

(2) A governing body that establishes a program under subsection (1) must cooperate with the department in the management and suppression of vertebrate pests, including cooperation in regard to the department's organized and systematic plans covering methods and procedures to be followed in the management and suppression of vertebrate pests.

(3) A governing body, in cooperation with the department, may enter into cooperative agreements with state and federal governmental agencies, counties, rodent control districts, associations, corporations, or individuals when cooperation is necessary to promote the management and suppression of vertebrate pests.

History: En. Sec. 5, Ch. 67, L. 1983.

Cross-References

Interlocal agreements, Title 7, ch. 11, part 1.

7-22-2503. Agreements with department. A governing body, when cooperating with the department, may enter into written agreements with the department covering the methods and procedures to be followed in the management and suppression of vertebrate pests, the extent of supervision to be exercised by the governing body, and the use and expenditures of state and county money.

History: En. Sec. 6, Ch. 67, L. 1983; amd. Sec. 10, Ch. 67, L. 1983.

7-22-2504 through 7-22-2510 reserved.

7-22-2511. County vertebrate pest management fund. A governing body that establishes a program to manage and suppress vertebrate pests must establish a county vertebrate pest management fund, from which the governing body may appropriate money for the operation of the program.

History: En. Sec. 7, Ch. 67, L. 1983.

7-22-2512. Financing of vertebrate pest management program — tax. (1) A governing body may:

(a) appropriate from the county general fund an amount not in excess of $10,000 annually and transfer it to the county vertebrate pest management fund; and

(b) levy a vertebrate pest management tax not to exceed 2 mills on the taxable valuation of all agricultural, horticultural, grazing, and timber lands and their improvements. Land within a rodent control district may not be taxed in any given year under both 7-22-2222 and this section for the control of rodents as defined in 7-22-2207. Land within a rodent control district may be taxed under this section only a dollar amount that is proportional to the part of the vertebrate pest program's projected fiscal year budget which is allocated to the management and suppression of vertebrate pests other than rodents.

(2) The tax provided for in subsection (1) must be collected as other county taxes and credited to the county vertebrate pest management fund.

History: En. Sec. 8, Ch. 67, L. 1983.

7-22-2513. Expenditures for supplies and services authorized. A governing body may make necessary expenditures from the county vertebrate pest management fund for equipment, materials, supplies, personal services, and other expenses. A governing body may also purchase vertebrate pest management supplies and equipment for use by cooperating governmental agencies, counties, rodent control districts, associations, corporations, or individuals in the management of vertebrate pests if the governing body charges such users the approximate cost of the supplies and equipment. Receipts from the resale of such supplies and equipment to the cooperating users must be credited to the county vertebrate pest management fund.

History: En. Sec. 9, Ch. 67, L. 1983.

Parts 26 through 40 reserved

Part 41

Municipal Weed Control

Part Cross-References

County weed control, Title 7, ch. 22, part 21.

Department of Agriculture — weed control, Title 80, ch. 7, part 7.

7-22-4101. Control of nuisance weeds within municipality. (1) The city or town council has power to:

(a) declare and determine what vegetation within the city or town shall be nuisance weeds;

(b) provide the manner in which they shall be exterminated;

(c) require the owner or owners of any property within said city or town to exterminate or remove nuisance weeds from their premises and the one-half of any road or street lying next to the land or boulevard abutting thereon; and

(d) provide, in the event the owner or owners of any of said premises neglect to exterminate or remove the nuisance weeds therefrom, for levying the cost of such extermination or removal as a special tax against the property.

(2) A noxious weed as defined in 7-22-2101 may not be declared a nuisance weed under this section.

History: **En. Subd. 83, Sec. 5039, R.C.M. 1921; amd. Sec. 1, Ch. 115, L. 1925; amd. Sec. 1, Ch. 20, L. 1927; re-en. Sec. 5039.82, R.C.M. 1935; R.C.M. 1947, 11-985; amd. Sec. 29, Ch. 607, L. 1985.**

Cross-References

County weed control, Title 7, ch. 22, part 21.

CHAPTER 23

DOMESTIC ANIMAL CONTROL AND PROTECTION

Part 1 — Local Government Control of Dogs

7-23-101. Dog collar and license tag required.
7-23-102. Seizure and impounding of dogs running at large without tag.
7-23-103. Local government cooperation in the operation of pounds.
7-23-104. Violations.
7-23-105. Disposition of fines.

Parts 2 through 20 reserved

Part 21 — County Control of Dogs

7-23-2101 through 7-23-2107. Repealed.
7-23-2108. County control of dogs.
7-23-2109. Vicious dog control.
7-23-2110 reserved.
7-23-2111 through 7-23-2117. Repealed.

Parts 22 through 40 reserved

Part 41 — Municipal Control and Protection of Domestic Animals

7-23-4101. Control of animals running at large.
7-23-4102. Licensing of dogs.
7-23-4103. Relation of municipal dog license tags to other laws.
7-23-4104. Cruelty to animals.

Chapter Cross-References

Containment of livestock, Title 81, ch. 4.

Part 1

Local Government Control of Dogs

7-23-101. Dog collar and license tag required. It shall be unlawful, where this part, part 21, and 7-23-4103 apply, for any person to own, harbor, or keep any dog over the age of 5 months or to permit such a dog owned, harbored, or controlled by him to run at large unless the dog has attached to its neck a substantial collar on which is fastened a license tag issued by the authority of a county or a municipal corporation for the purpose of identifying the dog and designating the owner; provided, however, that it shall be lawful to remove such collar and license tag when such dog is under the immediate control of its owner or his agent.

History: **En. Sec. 1, Ch. 280, L. 1959; R.C.M. 1947, 16-4601.**

7-23-102. Seizure and impounding of dogs running at large without tag. Any dog found running at large without a valid current dog license tag issued by the authority of a county or municipal corporation pursuant to the provisions of this part, part 21, and 7-23-4103 may be seized and impounded by any sheriff, deputy sheriff, policeman, game warden, county poundmaster, or other law enforcement officer.

History: En. Sec. 5, Ch. 280, L. 1959; R.C.M. 1947, 16-4605.

7-23-103. Local government cooperation in the operation of pounds. The board of county commissioners may enter into contracts with municipal corporations for the use by the county or by the municipal corporation of the impounding facilities of the other.

History: En. Sec. 7, Ch. 280, L. 1959; R.C.M. 1947, 16-4607(part).

Cross-References

Interlocal agreements, Title 7, ch. 11, part 1.

7-23-104. Violations. Violation of any provision of this part shall constitute a misdemeanor.

History: En. Sec. 13, Ch. 280, L. 1959; R.C.M. 1947, 16-4613; amd. Sec. 3, Ch. 508, L. 1983.

Cross-References

Classification of offenses, 45-1-201.

Misdemeanor defined, 45-2-101.

Misdemeanor — no penalty specified, 46-18-212.

7-23-105. Disposition of fines. All fines collected under the provisions of this part and part 21, except those collected by a justice's court, shall be paid into the county treasury and shall be used to pay fees, salaries, costs, or expenses for the enforcement of this part and part 21.

History: En. Sec. 12, Ch. 280, L. 1959; R.C.M. 1947, 16-4612(part); amd. Sec. 6, Ch. 557, L. 1987.

Cross-References

Collection and disposition of fines, penalties, forfeitures, and fees collected by a Justice's Court, 3-10-601.

Deposit and investment of public money, Title 7, ch. 6, part 2.

Parts 2 through 20 reserved

Part 21
County Control of Dogs

Part Cross-References

Animals unlawfully running at large, Title 81, ch. 4, part 2.

7-23-2101 through 7-23-2107. Repealed. Sec. 3, Ch. 208, L. 1979.

Compiler's Comments

Histories of Repealed Sections:

7-23-2101. En. Sec. 2, Ch. 280, L. 1959; R.C.M. 1947, 16-4602(part).

7-23-2102. En. Sec. 2, Ch. 280, L. 1959; R.C.M. 1947, 16-4602(part).

7-23-2103. En. Sec. 2, Ch. 280, L. 1959; R.C.M. 1947, 16-4602(part).

7-23-2104. En. Sec. 3, Ch. 280, L. 1959; R.C.M. 1947, 16-4603(part).

7-23-2105. En. Sec. 3, Ch. 280, L. 1959; R.C.M. 1947, 16-4603(part).

7-23-2106. En. Sec. 3, Ch. 280, L. 1959; R.C.M. 1947, 16-4603(part).

7-23-2107. En. Sec. 12, Ch. 280, L. 1959; R.C.M. 1947, 16-4612(part).

7-23-2108. County control of dogs. (1) The governing body of the county may regulate, restrain, or prohibit the running at large of dogs by the adoption of an ordinance which substantially complies with the provisions of 7-5-103 through 7-5-107 and which may provide for the wearing of a license tag upon the collar of the dog and the keeping of a record which will establish the identity of the person who owns, keeps, or harbors the dog.

(2) Violation of an ordinance adopted under subsection (1) is a misdemeanor.

(3) The county governing body is authorized to impound, sell, kill, or otherwise destroy dogs found at large contrary to ordinances.

(4) Nothing in this section restricts the governing body from enacting dog control measures in a portion of the county only.

History: En. Sec. 1, Ch. 208, L. 1979; amd. Sec. 2, Ch. 508, L. 1983.

7-23-2109. Vicious dog control. (1) The county governing body may regulate, restrain, control, kill, or quarantine any vicious dog, whether such dog is licensed or unlicensed, by the adoption of an ordinance which substantially complies with the provisions of 7-5-103 through 7-5-107.

(2) A violation of any ordinance established as provided in subsection (1) is a misdemeanor.

(3) For purposes of this section, a "vicious dog" is defined as one which bites or attempts to bite any human being without provocation or which harasses, chases, bites, or attempts to bite any other animal. The term "animal" includes all livestock and any domestic pet.

History: En. Sec. 2, Ch. 208, L. 1979.

Cross-References

Liability of owner of vicious dog, 27-1-715.

7-23-2110 reserved.

7-23-2111 through 7-23-2117. Repealed. Sec. 3, Ch. 208, L. 1979.

Compiler's Comments

Histories of Repealed Sections:

7-23-2111. En. Sec. 6, Ch. 280, L. 1959; R.C.M. 1947, 15-4606.

7-23-2112. En. Sec. 7, Ch. 280, L. 1959; R.C.M. 1947, 16-4607(part).

7-23-2113. En. Sec. 7, Ch. 280. L. 1959; R.C.M. 1947, 16-4607(part).

7-23-2114. En. Sec. 7, Ch. 280, L. 1959; R.C.M. 1947, 16-4607(part).

7-23-2115. En. Sec. 8, Ch. 280, L. 1959; R.C.M. 1947, 16-4608.

7-23-2116. En. Secs. 9, 10, Ch. 280, L. 1959; R.C.M. 1947, 16-4609, 16-4610.

7-23-2117. En. Sec. 11, Ch. 280, L. 1959; R.C.M. 1947, 16-4611.

Parts 22 through 40 reserved

Part 41

Municipal Control and Protection of Domestic Animals

Part Cross-References

Animals unlawfully running at large, Title 81, ch. 4, part 2.

7-23-4101. Control of animals running at large. The city or town council has power to regulate, restrain, or prohibit the running at large of horses, cattle, swine, sheep, goats, and dogs or other animals and to authorize the impounding and sale thereof if found at large contrary to ordinances.

History: En. Subd. 36, Sec. 5039, R.C.M. 1921; amd. Sec. 1, Ch. 115, L. 1925; amd. Sec. 1, Ch. 20, L. 1927; re-en. Sec. 5039.35, R.C.M. 1935; R.C.M. 1947, 11-938.

Cross-References

Swine, sheep, and goats running at large, 81-4-201.

7-23-4102. Licensing of dogs. The city or town council has power to license the keeping of dogs and to provide for the killing or destruction thereof if found running at large without license.

History: En. Subd. 37, Sec. 5039, R.C.M. 1921; amd. Sec. 1, Ch. 115, L. 1925; amd. Sec. 1, Ch. 20, L. 1927; re-en. Sec. 5039.36, R.C.M. 1935; R.C.M. 1947, 11-939.

Cross-References

General powers of Municipal Council, 7-5-4101.

7-23-4103. Relation of municipal dog license tags to other laws. Any dog license tag issued annually by any municipal corporation pursuant to an ordinance which substantially complies with parts 1 and 21 and which provides for the wearing of the license tag upon the collar of the dog and the keeping of a record which will establish the identity of the person who owns, keeps, or harbors the dog constitutes compliance with the licensing provisions of parts 1 and 21.

History: En. Sec. 4, Ch. 280, L. 1959; R.C.M. 1947, 16-4604.

7-23-4104. Cruelty to animals. The city or town council has power to prohibit and punish cruelty to animals.

History: En. Subd. 32, Sec. 5039, R.C.M. 1921; amd. Sec. 1, Ch. 115, L. 1925; amd. Sec. 1, Ch. 20, L. 1927; re-en. Sec. 5039.31, R.C.M. 1935; R.C.M. 1947, 11-934.

Cross-References

General powers of Municipal Council, 7-5-4101.

Cruelty to animals — crime, 45-8-211.

CHAPTERS 24 THROUGH 30

RESERVED

CHAPTER 31

GENERAL EMERGENCY AND PROTECTIVE SERVICES

Part 1 — Smoke Abatement

7-31-101. Authorization for smoke abatement program.
7-31-102. Petition for smoke abatement program.
7-31-103. Contract for smoke abatement.
7-31-104. Contractor's bond.
7-31-105. Modification of contract.
7-31-106. Authorization for county to issue bonds — election required.
7-31-107. Authorization for municipality to issue bonds — election required.
7-31-108. Notice of election.
7-31-109. Conduct of election.

7-31-110. Effect of election.
7-31-111. Cost of election in case of voter disapproval.
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7-31-116. Payment of bonds and other obligations.

Part 2 — Public Safety Communications Officer

7-31-201. Definitions.
7-31-202. Qualifications for public safety communications officers.
7-31-203. Certification of public safety communications officers — suspension or revocation — penalty — notification requirements.

Parts 3 through 20 reserved

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7-31-2101. Authorization to transfer funds for emergency relief.

Parts 22 through 40 reserved

Part 41 — General Provisions Affecting Municipalities

7-31-4101. Board of health.
7-31-4102. Sales of poisons and opium.
7-31-4103. Ditches, drains, and flumes in municipalities.
7-31-4104. Suppression of fraud and immoral publications.

Part 42 — Open Ditches

7-31-4201. Findings and purpose.
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7-31-4203. Open ditch declared nuisance.
7-31-4204. Investigation and remedial measures related to open ditches.
7-31-4205. Procedure to close and fill ditch — notice.
7-31-4206. Procedure to maintain open ditch.
7-31-4207. Exemption for commercial irrigation ditches — improvement districts for protection from open ditches.

Chapter Cross-References

Disaster and emergency services, Title 10, ch. 3.

Emergency medical services, Title 50, ch. 6.

Part 1
Smoke Abatement

Part Cross-References

Air quality, Title 75, ch. 2.

7-31-101. Authorization for smoke abatement program. It shall be lawful for any county or incorporated city or town in any county in this state where injurious and unhealthy smoke and fumes exist to make contracts for the abatement thereof and to issue and dispose of bonds for that purpose, subject to the limitations and conditions provided in this part.

History: En. Sec. 1, p. 142, L. 1893; re-en. Sec. 4831, Pol. C. 1895; re-en. Sec. 3430, Rev. C. 1907; re-en. Sec. 5289, R.C.M. 1921; re-en. Sec. 5289, R.C.M. 1935; R.C.M. 1947, 11-2501.

Cross-References

Debt management — general provisions related to local governments, Title 7, ch. 7, part 1.

Local air pollution control programs, 75-2-301.

7-31-102. Petition for smoke abatement program. Wherever a petition is presented to the board of county commissioners of any county or to the council of any incorporated city or town, signed by at least 100 of the resident taxpayers of such county or incorporated city or town, requesting that a contract be made and vote taken under this part, it shall be the duty of the board of county commissioners of such county or the council of such incorporated city or town, as the case may be, to enter into and make a contract for the abatement of such injurious and unhealthy smoke or fumes or for conducting or carrying the same away, so as to remove or lessen the injurious and unhealthy results thereof as effectually as the same can be done.

History: En. Sec. 2, p. 142, L. 1893; re-en. Sec. 4832, Pol. C. 1895; re-en. Sec. 3431, Rev. C. 1907; re-en. Sec. 5290, R.C.M. 1921; re-en. Sec. 5290, R.C.M. 1935; R.C.M. 1947, 11-2502(part).

Cross-References

Petitions, 7-5-133 through 7-5-135.

7-31-103. Contract for smoke abatement. (1) The smoke abatement contract shall:

(a) be entered into and made with such person or persons or corporation or corporations and contain such provisions and conditions as will, in the opinion of the board of county commissioners or the council of said incorporated town or city, as the case may be, best accomplish the purpose aforesaid; and

(b) take effect and be in force as provided in this part.

(2) Whenever a contract shall have been entered into as aforesaid, it shall be reduced to writing and executed by the parties in due form of law and three copies thereof deposited with the clerk of the board of county commissioners or clerk of the council, as the case may be, for public inspection and examination.

History: (1)En. Sec. 2, p. 142, L. 1893; re-en. Sec. 4832, Pol. C. 1895; re-en. Sec. 3431, Rev. C. 1907; re-en. Sec. 5290, R.C.M. 1921; re-en. Sec. 5290, R.C.M. 1935; Sec. 11-2502, R.C.M. 1947; (2)En. Sec. 3, p. 143, L. 1893; re-en. Sec. 4833, Pol. C. 1895; re-en. Sec. 3432, Rev. C. 1907; re-en. Sec. 5291, R.C.M. 1921; re-en. Sec. 5291, R.C.M. 1935; Sec. 11-5203, R.C.M. 1947; R.C.M. 1947, 11-2502(part), 11-2503(part).

Cross-References

County contracts, Title 7, ch. 5, part 23.

Municipal contracts, Title 7, ch. 5, part 43.

Contracts, Title 28, ch. 2.

7-31-104. Contractor's bond. The person or persons or corporation or corporations with whom said contract shall have been made shall execute their or its bond or bonds, with sufficient sureties, to such board of county commissioners or city or town, conditioned for the full and faithful performance of all the terms and conditions on their part. The terms, conditions, and penalty of the surety bond shall be approved by the contracting board or council. The surety bond or bonds shall be in full force and effect upon the ratification of the contract as provided in this part, the condition of which shall be expressed in the contract.

History: En. Sec. 3, p. 143, L. 1893; re-en. Sec. 4833, Pol. C. 1895; re-en. Sec. 3432, Rev. C. 1907; re-en. Sec. 5291, R.C.M. 1921; re-en. Sec. 5219, R.C.M. 1935; R.C.M. 1947, 11-2503(part).

Cross-References

Suretyship, Title 28, ch. 11, part 4.

7-31-105. Modification of contract. In the event it shall be found expedient and proper in executing said contract to modify or change the same in some of the minute details thereof and such modifications or changes shall be agreed upon by the parties thereto, the same may be made with the approval of the judge or judges of the district forming such county or the judge or judges of the district in which such county or incorporated city or town is included and, when so approved, shall have the same force and effect as if originally contained therein.

History: En. Sec. 10, p. 146, L. 1893; re-en. Sec. 4840, Pol. C. 1895; re-en. Sec. 3439, Rev. C. 1907; re-en. Sec. 5298, R.C.M. 1921; re-en. Sec. 5298, R.C.M. 1935; R.C.M. 1947, 11-2510.

Cross-References

Modification of contracts, Title 28, ch. 2, part 16.

7-31-106. Authorization for county to issue bonds — election required. (1) If the petition is presented to the board of county commissioners, the board shall, for the purpose of raising money to meet the payments under the terms and conditions of the contract and other necessary and proper expenses for the contract and for the approval or disapproval of the petition:

(a) ascertain, within 30 days after submission of the petition, the existing indebtedness of the county in the aggregate; and

(b) submit, after ascertaining the aggregate indebtedness, to the electors of the county the proposition to approve or disapprove the contract and the issuance of bonds necessary to carry out the contract. The election must be held in conjunction with a regular or primary election.

(2) The amount of the bonds authorized by this section may not exceed 22.5% of the taxable value of the taxable property in the county, inclusive of the existing indebtedness of the county, to be ascertained by the last assessment for state and county taxes previous to the issuance of the bonds and incurring of the indebtedness.

History: En. Sec. 4, p. 143, L. 1893; re-en. Sec. 4834, Pol. C. 1895; re-en. Sec. 3433, Rev. C. 1907; re-en. Sec. 5292, R.C.M. 1921; re-en. Sec. 5292, R.C.M. 1935; R.C.M. 1947, 11-2504(part); amd. Sec. 56, Ch. 614, L. 1981; amd. Sec. 58, Ch. 387, L. 1995.

Compiler's Comments

1995 Amendment: Chapter 387 in (1)(b), near beginning after "submit", deleted "within 60 days" and inserted second sentence requiring the election to be held in conjunction with a regular or primary election; and made minor changes in style.

Cross-References

Purposes for which general obligation bonds of a county may be issued, 7-7-2201.

7-31-107. Authorization for municipality to issue bonds — election required. (1) If the petition is presented to the council of any incorporated city or town, the council, for the purpose of raising money to meet the payments under the terms and conditions of the contract and other necessary and proper expenses for the contract and for the approval or disapproval of the petition, shall:

(a) ascertain, within 30 days after submission of the petition, the aggregate indebtedness of the city or town; and

(b) submit, after ascertaining the aggregate indebtedness, to the electors of the city or town the proposition to approve or disapprove the contract and the issuance of bonds necessary to carry out the contract. The election must be held in conjunction with a regular or primary election.

(2) The amount of the bonds authorized by this section may not exceed 16.5% of the taxable value of the taxable property in the city or town, inclusive of the existing indebtedness of the city or town, to be ascertained in the manner provided in this part.

History: En. Sec. 4, p. 143, L. 1893; re-en. Sec. 4834, Pol. C. 1895; re-en. Sec. 3433, Rev. C. 1907; re-en. Sec. 5292, R.C.M. 1921; re-en. Sec. 5292, R.C.M. 1935; R.C.M. 1947, 11-2504(part); amd. Sec. 57, Ch. 614, L. 1981; amd. Sec. 59, Ch. 387, L. 1995.

Compiler's Comments

1995 Amendment: Chapter 387 in (1)(b), near beginning after "submit", deleted "within 60 days" and inserted second sentence requiring the election to be held in conjunction with a regular or primary election; and made minor changes in style.

Cross-References

Municipal revenue bonds, Title 7, ch. 7, part 44.

7-31-108. Notice of election. (1) The board of county commissioners of the county in which such election is to be held or the council of the incorporated city or town, as the case may be, shall give notice of such election, stating:

(a) the objects thereof;

(b) the time and place of holding the same;

(c) such conditions of the contract as in their judgment are proper and necessary to enable the electors to vote intelligently upon the proposition submitted to them;

(d) the amount of bonds proposed to be issued, when payable, and the interest they are to bear; and

(e) a description of the tickets or ballots to be used.

(2) The notice shall be given at least three times a week for at least 6 consecutive weeks next preceding such election in some newspaper printed and published and circulated in the county, city, or town, as the case may be, in which such election shall be held and if no newspaper be printed, published, and circulated therein, then in some newspaper printed and published in some county nearest thereto.

History: En. Sec. 6, p. 144, L. 1893; re-en. Sec. 4836, Pol. C. 1895; re-en. Sec. 3435, Rev. C. 1907; re-en. Sec. 5294, R.C.M. 1921; re-en. Sec. 5294, R.C.M. 1935; R.C.M. 1947, 11-2506.

Cross-References

Petition and election required for issuance of certain bonds, 7-7-2223.

Notice of election, 7-7-2229.

7-31-109. Conduct of election. (1) The vote upon a proposition under this part must be at an election for that purpose to be held, conducted, and counted and with results ascertained and determined in the manner and by the same officers provided by law for general elections, except as otherwise provided in this section. The election must be held in conjunction with a regular or primary election.

(2) The proposition must be submitted upon printed tickets or ballots, upon each of which is printed the following: "For the contract and bonds" and

"Against the contract and bonds". The elector shall vote by a cross opposite one statement.

(3) No registration under the election laws of this state is required for the purposes of the election, and the registration from the last election governs and controls for the purpose of the election to be held under this part.

History: (1), (2)En. Sec. 5, p. 144, L. 1893; re-en. Sec. 4835, Pol. C. 1895; re-en. Sec. 3434, Rev. C. 1907; re-en. Sec. 5293, R.C.M. 1921; re-en. Sec. 5293, R.C.M. 1935; Sec. 11-2505, R.C.M. 1947; (3)En. Sec. 11, p. 146, L. 1893; re-en. Sec. 4841, Pol. C. 1895; re-en. Sec. 3440, Rev. C. 1907; re-en. Sec. 5299, R.C.M. 1921; re-en. Sec. 5299, R.C.M. 1935; Sec. 11-2511, R.C.M. 1947; R.C.M. 1947, 11-2505(part), 11-2511; amd. Sec. 60, Ch. 387, L. 1995.

Compiler's Comments

1995 Amendment: Chapter 387 in (1), at end, inserted "The election must be held in conjunction with a regular or primary election"; and made minor changes in style.

Cross-References

Time of holding election on question of issuing bonds, 7-7-2228.

7-31-110. Effect of election. (1) If a majority of the votes cast were for the contract and bonds, then the contract is in full force and effect and the bonds shall be issued and disposed of in the manner provided in this part.

(2) If there was a tie vote or a majority of the votes were cast against the contract and bonds, then the contract and surety bond given for its fulfillment are void and the bonds shall not be issued.

History: En. Sec. 5, p. 144, L. 1893; re-en. Sec. 4835, Pol. C. 1895; re-en. Sec. 3434, Rev. C. 1907; re-en. Sec. 5293, R.C.M. 1921; re-en. Sec. 5293, R.C.M. 1935; R.C.M. 1947, 11-2505(part); amd. Sec. 1, Ch. 263, L. 1979.

Cross-References

Percentage of electors required to authorize bond issue, 7-7-2237.

7-31-111. Cost of election in case of voter disapproval. If the proposition submitted to the voters pursuant to 7-31-106 or 7-31-107 is disapproved, the expenses of such election shall be paid out of the general fund of such county, city, or town, as the case may be.

History: En. Sec. 4, p. 143, L. 1893; re-en. Sec. 4834, Pol. C. 1895; re-en. Sec. 3433, Rev. C. 1907; re-en. Sec. 5292, R.C.M. 1921; re-en. Sec. 5292, R.C.M. 1935; R.C.M. 1947, 11-2504(part).

7-31-112. Details relating to bonds. (1) The bonds to be issued upon the conditions and under the provisions aforesaid shall:

(a) bear the date of their issuance;

(b) be designated as sanitary coupon bonds of the county, city, or town issuing the same;

(c) be of a denomination not less than $500 or more than $1,000 each;

(d) be payable at such place in New York City or elsewhere, at the discretion of the board or council issuing the same;

(e) bear interest as provided in 17-5-102, payable 30 years after the date thereof, with the privilege of paying the same at any time after 5 years from such date, which interest shall be payable semiannually at the place whereat the principal is payable and for which interest coupons shall be attached to said bonds.

(2) If said bonds and coupons are issued by any county, they shall be signed by the chairman of the board of county commissioners of such county and attested by the clerk thereof and his seal attached thereto. If the bonds and coupons are issued by any incorporated city or town, the same shall be signed

by the mayor and attested to by the city or town clerk and the seal thereof attached.

History: En. Sec. 7, p. 145, L. 1893; re-en. Sec. 4837, Pol. C. 1895; re-en. Sec. 3436, Rev. C. 1907; re-en. Sec. 5295, R.C.M. 1921; re-en. Sec. 5295, R.C.M. 1935; R.C.M. 1947, 11-2507; amd. Sec. 8, Ch. 500, L. 1981; amd. Sec. 1, Ch. 11, L. 1983; amd. Sec. 26, Ch. 370, L. 1987.

Cross-References

County general obligation bonds, Title 7, ch. 7, part 22.

Municipal revenue bonds, Title 7, ch. 7, part 44.

7-31-113. Disposition of bonds. (1) The board of county commissioners or council, as the case may be:

(a) may provide by said contract for the delivery of said bonds or any part thereof at their face value, upon the terms and conditions provided in said contract; or

(b) may sell and dispose of the same or any part thereof to raise funds to carry out said contract and use such funds for that purpose and for the payment of any expert or experts or any incidental expenses proper and necessary in and about said contract and the carrying out of the same.

(2) In the event said bonds are sold, they shall be sold for cash to the highest bidder, after public notice by publication in a paper of general circulation which may be printed and published in each county in the state and also by publication in at least three newspapers of general circulation printed and published in the cities of Boston and New York. Such notice shall be published at least once a week and shall contain, in substance, a description of said bonds as set out in 7-31-112.

History: En. Sec. 8, p. 145, L. 1893; re-en. Sec. 4838, Pol. C. 1895; re-en. Sec. 3437, Rev. C. 1907; re-en. Sec. 5296, R.C.M. 1921; re-en. Sec. 5296, R.C.M. 1935; R.C.M. 1947, 11-2508(part).

Cross-References

Delivery of bonds, 7-7-2259.

Sale of bonds, 7-7-4433.

7-31-114. Disposition of sale proceeds — sanitary coupon bond fund. The proceeds of the sales of bonds:

(1) shall be paid over to the county treasurer, the city treasurer, or the town clerk, as the case may be, and kept as a separate and independent fund for the purposes herein provided, to be known as the sanitary coupon bond fund; and

(2) shall be deposited and kept in such a manner and at such bank or banks as the board of county commissioners of the county or council of the city or town owning such funds may direct.

History: En. Sec. 8, p. 145, L. 1893; re-en. Sec. 4838, Pol. C. 1895; re-en. Sec. 3437, Rev. C. 1907; re-en. Sec. 5296, R.C.M. 1921; re-en. Sec. 5296, R.C.M. 1935; R.C.M. 1947, 11-2508(part).

Cross-References

County — disposition of sale proceeds, 7-7-2260.

Municipalities — sale of bonds, 7-7-4433.

7-31-115. Disbursement of money. Money in the sanitary coupon bond fund shall not be paid out or disbursed except upon warrants or orders drawn thereon by the board of county commissioners or council of such incorporated city or town, signed and attested in the manner provided by law.

History: En. Sec. 8, p. 145, L. 1893; re-en. Sec. 4838, Pol. C. 1895; re-en. Sec. 3437, Rev. C. 1907; re-en. Sec. 5296, R.C.M. 1921; re-en. Sec. 5296, R.C.M. 1935; R.C.M. 1947, 11-2508(part).

Cross-References

County warrants, Title 7, ch. 6, part 26.

Municipal warrants, Title 7, ch. 6, part 45.

7-31-116. Payment of bonds and other obligations. (1) The faith of the county or incorporated city or town issuing bonds under the provisions of this part is solemnly pledged for the payment of the principal and interest according to the tenure of said bonds and the coupons attached to the same.

(2) The board of county commissioners of the county or council of the incorporated city or town issuing said bonds:

(a) shall ascertain and levy and assess a tax sufficient to pay the interest upon said bonds, which shall become a lien and be collected as other taxes; and

(b) shall form such sinking fund for the payment of the principal thereof as may be necessary and proper, in the manner provided by law or ordinance, which shall be kept as a separate fund.

(3) All bonds, coupons, orders, and warrants issued and drawn under the provisions of this part shall be promptly paid, registered, and entered in books kept for that purpose, with correct and proper entries made in respect thereto, and the same, when paid, shall be canceled and preserved, with proper entries made thereof, as provided by law in cases of other bonds, warrants, and orders.

History: En. Sec. 9, p. 146, L. 1893; re-en. Sec. 4839, Pol. C. 1895; re-en. Sec. 3438, Rev. C. 1907; re-en. Sec. 5297, R.C.M. 1921; re-en. Sec. 5297, R.C.M. 1935; R.C.M. 1947, 11-2509.

Cross-References

Counties — payment of principal and interest, 7-7-2262.

Municipalities — payment of principal and interest, 7-7-4262.

Part 2

Public Safety Communications Officer

7-31-201. Definitions. As used in this part, the following definitions apply:

(1) "Board" means the Montana board of crime control provided for in 2-15-2006.

(2) "Public safety communications officer" means a person who receives requests for emergency services, as defined in 10-4-101, dispatches the appropriate emergency service units, and is certified under 7-31-203.

History: En. Sec. 1, Ch. 58, L. 1991.

7-31-202. Qualifications for public safety communications officers. To be appointed a public safety communications officer, a person:

(1) must be a citizen of the United States;

(2) must be at least 18 years of age;

(3) must be fingerprinted and a search must be made of local, state, and national fingerprint files to disclose any criminal record;

(4) may not have been convicted of a crime for which he could have been imprisoned in a federal or state penitentiary;

(5) must be of good moral character, as determined by a thorough background investigation;

(6) must be a high school graduate or have passed the general education development test and have been issued an equivalency certificate by the superintendent of public instruction or by an appropriate issuing agency of another state or of the federal government; and

(7) shall meet any additional qualifications established by the board.

History: **En. Sec. 2, Ch. 58, L. 1991.**

7-31-203. Certification of public safety communications officers — suspension or revocation — penalty — notification requirements. (1) A local government may require that a person appointed to receive requests for emergency services, as defined in 10-4-101, and to dispatch the appropriate emergency service units be certified by the board as a public safety communications officer.

(2) The board shall determine the certification standards for public safety communications officers as provided in 7-31-202.

(3) A public safety communications officer who has successfully met the certification standards set by the board and the qualification requirements in 7-31-202 and who has completed a 6-month probationary term of employment must, upon application to the board, be issued a basic public safety communications officer certificate.

(4) It is unlawful for a person whose certification as a public safety communications officer has been suspended or revoked by the board to act as a public safety communications officer. A person convicted of violating this subsection is guilty of a misdemeanor, punishable by a term of imprisonment not to exceed 6 months in the county jail or by a fine not to exceed $500, or both.

(5) Within 10 days of the appointment, termination, resignation, or death of any public safety communications officer, written notice must be given to the board by the employing authority.

History: **En. Sec. 3, Ch. 58, L. 1991; amd. Sec. 1, Ch. 437, L. 1993.**

Parts 3 through 20 reserved

Part 21

General Provisions Affecting Counties

Part Cross-References

Disaster and emergency services, Title 10, ch. 3.

7-31-2101. Authorization to transfer funds for emergency relief. Whenever the governor shall issue a proclamation declaring that an emergency exists in any county requiring the relief of suffering of the inhabitants thereof caused by famine, destitution, conflagration, or other public calamity, the board of county commissioners of such county is authorized to transfer to the proper fund to be used for purposes of such relief any money in any other fund or funds of the county, but no money belonging to any bond sinking or interest fund or any school fund must be so transferred. The governor shall in his proclamation state the facts upon which such emergency is declared and shall specifically limit the time during which such transfers may be made.

History: **En. Sec. 1, Ch. 43, L. 1933; re-en. Sec. 4470.3, R.C.M. 1935; R.C.M. 1947, 16-1107.**

Cross-References

Emergencies — intergovernmental cooperation, Title 10, ch. 3, part 2.

Local and interjurisdictional planning and execution, Title 10, ch. 3, part 4.

Parts 22 through 40 reserved

Part 41

General Provisions Affecting Municipalities

7-31-4101. Board of health. The city or town council has power to provide for a board of health and to prescribe its powers and duties and, when such board of health is provided, for the same to have jurisdiction within the city or town limits and within 3 miles thereof.

History: **En. Subd. 44, Sec. 5039, R.C.M. 1921; amd. Sec. 1, Ch. 115, L. 1925; amd. Sec. 1, Ch. 20, L. 1927; re-en. Sec. 5039.43, R.C.M. 1935; R.C.M. 1947, 11-946.**

Cross-References

Local Boards of Health, Title 50, ch. 2, part 1.

7-31-4102. Sales of poisons and opium. (1) The city or town council has power to regulate the sales of poisons and to punish any person for selling or using opium or any preparation thereof, for having the same or any implement to be used in smoking it in his possession, or for keeping, maintaining, visiting, or contributing to the support of a room or place where the same is smoked or used.

(2) Druggists may sell opium or any preparation thereof, subject to the general laws of the state in relation thereto.

History: **En. Subd. 61, Sec. 5039, R.C.M. 1921; amd. Sec. 1, Ch. 115, L. 1925; amd. Sec. 1, Ch. 20, L. 1927; re-en. Sec. 5039.60, R.C.M. 1935; R.C.M. 1947, 11-963.**

Cross-References

Unlawful possession of intoxicating substance by children, 45-5-624.

Offenses involving dangerous drugs, Title 45, ch. 9, part 1.

Pesticides, Title 80, ch. 8.

7-31-4103. Ditches, drains, and flumes in municipalities. The city or town council has power to regulate the use and construction of irrigating ditches, drains, and flumes within or running through any city or town.

History: **En. Subd. 82, Sec. 5039, R.C.M. 1921; amd. Sec. 1, Ch. 115, L. 1925; amd. Sec. 1, Ch. 20, L. 1927; re-en. Sec. 5039.81, R.C.M. 1935; R.C.M. 1947, 11-984.**

Cross-References

General powers of Municipal Council, 7-5-4101.

7-31-4104. Suppression of fraud and immoral publications. The city or town council has power to suppress and punish all fraudulent devices and practices for the purpose of obtaining money or property and to prohibit the same or exhibition of immoral publications, prints, pictures, or illustrations.

History: **En. Subd. 20, Sec. 5039, R.C.M. 1921; amd. Sec. 1, Ch. 115, L. 1925; amd. Sec. 1, Ch. 20, L. 1927; re-en. Sec. 5039.19, R.C.M. 1935; R.C.M. 1947, 11-922.**

Cross-References

Control of disturbances of the peace, 7-32-4302.

Kinds of fraud, 28-2-404.

What constitutes actual fraud, 28-2-405.

What constitutes constructive fraud, 28-2-406.

Obscenity, 45-8-201.

Part 42

Open Ditches

Part Cross-References

Nuisances, Title 27, ch. 30.

7-31-4201. Findings and purpose. (1) The legislature declares that the control of ditchwater in inhabited areas of Montana is affected with the public interest.

(2) The purpose of this part is to prevent drowning of children in ditches filled or partially filled with water within the limits of an incorporated city or town.

History: En. Sec. 1, Ch. 63, L. 1961; amd. Sec. 1, Ch. 306, L. 1969; R.C.M. 1947, 11-4001(part).

Cross-References

Distinction between public and private nuisances, 27-30-102.

7-31-4202. Interpretation of part. (1) This part shall be deemed an exercise of the police power of the state in and for the protection of the welfare, health, peace, and safety of the people of Montana. This part shall be construed merely as a regulation in the public interest so that the diversion, transportation, and use of water in such ditches in cities and towns shall be in a safe manner, as defined by this part.

(2) Nothing in this part shall be construed as intending to effectuate the abandonment of any valid water right.

History: En. Sec. 1, Ch. 63, L. 1961; amd. Sec. 1, Ch. 306, L. 1969; R.C.M. 1947, 11-4001(part).

Cross-References

Distinction between public and private nuisances, 27-30-102.

7-31-4203. Open ditch declared nuisance. Notwithstanding any provision contained in Title 85 or any law pertaining to the use of water in Montana, it is hereby declared that water which flows through the limits of an incorporated city or town in an open ditch is a public nuisance if such city or town, acting through its governing body declares it to be such nuisance.

History: En. Sec. 2, Ch. 63, L. 1961; amd. Sec. 2, Ch. 306, L. 1969; R.C.M. 1947, 11-4002.

Cross-References

Public nuisances, Title 27, ch. 30, part 2.

7-31-4204. Investigation and remedial measures related to open ditches. The governing body of the city or town is hereby given the power to:

(1) investigate the dangerous condition of such ditches within the corporate limits and declare any such ditch a public nuisance; and

(2) determine the measures necessary to remove the danger and public nuisance, including fencing or the use of culverts or other protective devices, based upon standards to be determined by such city or town.

History: En. Sec. 3, Ch. 63, L. 1961; amd. Sec. 3, Ch. 306, L. 1969; R.C.M. 1947, 11-4003.

Cross-References

Remedies for public nuisances, 27-30-202.

7-31-4205. Procedure to close and fill ditch — notice. (1) When a public nuisance has been declared, as provided in this part, the city or town shall give public notice for at least 60 days to owners of the ditch and of any water rights affected that such ditch has been declared a public nuisance and that it shall be closed and filled unless the owners of such rights desire to keep the ditch open.

(2) Such notice shall include publication once each week for at least 8 successive weeks in an established newspaper published within the city or town if one exists or, in its absence, in the official county newspaper.

History: En. Sec. 4, Ch. 63, L. 1961; R.C.M. 1947, 11-4004.

Cross-References

County printing contract, 7-5-2411.

Abatement of public nuisance by public body or officer or injured party, 27-30-204.

7-31-4206. Procedure to maintain open ditch. (1) If a person claims that the water has not been abandoned and claims the right to use water in a ditch that the city or town has declared a public nuisance, he shall notify the city or town before the expiration of the 60-day period that he wishes to continue the use of such water within the city or town and that he, individually or with others, will provide such protective devices as ordered by the city or town.

(2) If such notice is given, the person or persons claiming such right or rights shall have a period not to exceed 6 months to remove the public nuisance in the manner ordered by the city or town.

(3) If the city or town approves the work, it shall permit the water to flow into the city or town. If the protective device is not provided or if it does not meet specifications required by the city or town, the city or town may designate such ditch abandoned and order it closed or filled when the 6-month period ends.

History: En. Sec. 5, Ch. 63, L. 1961; R.C.M. 1947, 11-4005.

Cross-References

Public nuisances, Title 27, ch. 30, part 2.

7-31-4207. Exemption for commercial irrigation ditches — improvement districts for protection from open ditches. (1) This part does not apply to ditches carrying water used for commercial irrigation purposes.

(2) However, whenever the public interest or convenience may require, a city or town is hereby authorized and empowered to create a special improvement district for the purpose of building, constructing, acquiring by purchase, and maintaining devices intended to protect the safety of the public from open ditches carrying water. Such devices or improvements shall provide access to and shall not be constructed so as to hinder the operation and maintenance of the ditch. The owner or owners of open ditches carrying irrigation or other water shall not be included in any special improvement district under this part

for the purpose of assessment to support the special improvement district for the installation, repair, or maintenance of any protective devices.

History: En. Sec. 6, Ch. 63, L. 1961; amd. Sec. 4, Ch. 306, L. 1969; R.C.M. 1947, 11-4006.

Cross-References

Irrigation districts, Title 85, ch. 7.

CHAPTER 32

LAW ENFORCEMENT

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Chapter Cross-References

Private investigators and patrol officers, Title 37, ch. 60.

Law Enforcement, Title 44.

Crimes, Title 45.

Criminal Procedure, Title 46.

Part 1
Department of Public Safety

Part Cross-References

Automatic security alarm system — permission of chief law enforcement officer, 37-60-408.

7-32-101. Department of public safety authorized. In counties other than first- and second-class counties, on agreement of the legislative body of a city or town with the county commissioners of the county in which it is located, there may be established a department of public safety in lieu of a police department and a sheriff's office.

History: En. Sec. 1, Ch. 347, L. 1973; amd. Sec. 1, Ch. 146, L. 1975; R.C.M. 1947, 16-2726(part).

Cross-References

Classification of counties, 7-1-2111.

7-32-102. Director of department of public safety. The director of the department of public safety shall be the sheriff, who may be elected or may be appointed by the public safety commission if the form of county government provides for an appointed sheriff. A director so appointed shall receive a majority of the votes of the public safety commission members voting on the question of his appointment.

History: En. Sec. 2, Ch. 347, L. 1973; amd. Sec. 6, Ch. 146, L. 1975; R.C.M. 1947, 16-2727.

Cross-References

Duties of Sheriff, 7-32-2121.

Veterans' public employment preference, Title 39, ch. 29.

Handicapped persons' public employment preference, Title 39, ch. 30.

7-32-103. Structure of department of public safety — duties. (1) The director shall have the powers and perform the duties conferred on and required of sheriffs, police officers, and chiefs of police, except in cases involving the discharge or termination of employment of subordinate employees.

(2) Officers and patrol officers of the city or town police department and deputies of the county sheriff's office shall be subordinate to the director and shall have the power and perform the duties conferred on and required of police officers and patrol officers in cities and towns and of sheriff's deputies in counties, as required by state law and municipal ordinance.

History: En. Sec. 3, Ch. 347, L. 1973; amd. Sec. 7, Ch. 146, L. 1975; R.C.M. 1947, 16-2728(part); amd. Sec. 1, Ch. 217, L. 1989.

Cross-References

Duties of Sheriff, 7-32-2121.

Supervision of police department, 7-32-4103.

Duties of Chief of Police, 7-32-4105.

7-32-104. Salaries. The provisions of 7-4-2503 notwithstanding, the salaries of the director and employees of the department of public safety shall be established by the public safety commission and shall be paid by the city or town with the board of county commissioners. The salary of the director may not be less than that specified for the sheriff in 7-4-2503. The salaries of employees may not be less than the salaries specified in 7-4-2508 and 7-4-2510; however, employees are not required to be paid any fixed percentage of the director's or sheriff's salary.

History: En. Sec. 4, Ch. 347, L. 1973; amd. Sec. 11, Ch. 146, L. 1975; R.C.M. 1947, 16-2729; amd. Sec. 1, Ch. 256, L. 1985.

Cross-References

Minimum wage of police in first- and second-class cities, 7-32-4116.

7-32-105. Officers' status for purpose of enforcing and executing court orders. For the purpose of serving and making return on all criminal and civil process, executing judgments, decrees, and orders of court, and making sales thereunder and returns thereof, the director shall be known and designated as "sheriff of the city and county of ...." and each police officer, patrol officer, and deputy sheriff shall be known and designated as "deputy sheriff".

History: **En. Sec. 5, Ch. 347, L. 1973; R.C.M. 1947, 16-2730; amd. Sec. 1, Ch. 217, L. 1989.**

Cross-References

Duties of Sheriff, 7-32-2121.

Fees of Sheriff, 7-32-2141.

Service, Rule 4D, M.R.Civ.P. (see Title 25, ch. 20).

7-32-106. Meaning of terms employee and subordinate employee. "Employee" or "subordinate employee" means but is not limited to any officer or patrol officer of the city or town police department, any deputy of the county sheriff's office, or any person employed as a clerk, dispatcher, or secretary by the department of public safety or so employed by the city or town police department or the county sheriff's office prior to the establishment of the department of safety.

History: **En. Sec. 3, Ch. 347, L. 1973; amd. Sec. 7, Ch. 146, L. 1975; R.C.M. 1947, 16-2728(1); amd. Sec. 1, Ch. 217, L. 1989.**

Cross-References

Qualifications of Deputy Sheriff, 7-32-2104.

Municipal police force, Title 7, ch. 32, part 41.

7-32-107. Hearing required for discharge of subordinate employee. In all cases involving the discharge or the termination of employment of any subordinate employee by the director of the department of public safety, such employee is entitled to a full hearing as provided in this part, except that those employees covered under collective bargaining agreements as provided for in Title 39, chapter 31 shall be entitled to use any grievance procedure provided for within the collective bargaining agreement.

History: **En. Sec. 3, Ch. 347, L. 1973; amd. Sec. 7, Ch. 146, L. 1975; R.C.M. 1947, 16-2728(2).**

Cross-References

Right to hearing on termination of Deputy Sheriff's employment, 7-32-2109.

7-32-108. Hearing procedure for employee discharged by an appointed director. (1) A director appointed by the public safety commission shall at the time of the discharge or termination of the employment of any subordinate employee provide such employee a written statement, subscribed and sworn to by the director, setting forth the cause or causes for the discharge or termination of employment.

(2) Within 30 days from the date of discharge or termination of his employment, such employee may make application to the public safety commission for a hearing before the commission on the charges resulting in the employee's discharge or termination of employment. Such employee may be present at the hearing in person and may be represented by legal counsel. The commission shall keep a record of the proceedings in such cases, and the records shall be a matter of public record. For the purpose of keeping a record of the proceedings in such a case, the department of public safety shall provide the commission with a person qualified to keep a record of the proceedings. Such person may be an employee of the department.

(3) The commission shall, after the conclusion of the hearing, decide whether the charges resulting in the employee's discharge or termination of employment have been proven.

(4) The commission shall have the power, in all cases wherein a majority of the commission members find the charges not proven, to reinstate any employee to the same position he held and at the same salary he received prior to discharge or termination of employment.

(5) In all cases wherein a majority of the commission members find the charges proven, the employee may appeal the decision of the commission to the district court of the county wherein the employee was employed. Such appeal must be initiated within 60 days of the ruling of the commission.

History: En. 16-2728.1 by Sec. 8, Ch. 146, L. 1975; R.C.M. 1947, 16-2728.1.

Cross-References

Right to hearing on termination of Deputy Sheriff's employment, 7-32-2109.

Reinstatement of Deputy Sheriff, 7-32-2110.

Procedure for reinstatement on police force, 7-32-4110.

7-32-109. Hearing procedure for employee discharged by elected director. (1) A director who is elected shall at the time of the discharge or termination of employment of any subordinate employee be required to follow the procedures of notice required of an appointed director.

(2) Any employee discharged or terminated by an elected director is entitled to a hearing before the public safety commission in the manner provided in 7-32-108.

(3) The public safety commission shall, after the conclusion of the hearing, decide whether the charges resulting in the employee's discharge or termination have been proven.

(4) The commission may request that the elected director reinstate an employee in all cases wherein a majority of the commission members find the charges not proven. The director may deny such a request for reinstatement but shall provide the commission with a written statement, subscribed and sworn to by the director, setting forth the reason or reasons for the refusal to reinstate the discharged or terminated employee. Such written statement shall become a part of the records of the proceedings of the commission and shall be open to public scrutiny.

(5) In all cases wherein the commission finds the charges not proven but the elected director refuses to reinstate the discharged or terminated employee or cases wherein a majority of the commission members find the charges proven, the employee may appeal the decision in the manner provided in 7-32-108.

History: En. 16-2728.2 by Sec. 9, Ch. 146, L. 1975; R.C.M. 1947, 16-2728.2.

Cross-References

Right to hearing on termination of Deputy Sheriff's employment, 7-32-2109.

Reinstatement of Deputy Sheriff, 7-32-2110.

Procedure for reinstatement on police force, 7-32-4110.

7-32-110. Reinstatement of discharged employee who prevails in district court. In the event that an employee prevails in an appeal to the district court, he shall be entitled to be reinstated to the same position he held and at the same salary he received prior to his discharge or termination by the director.

History: **En. 16-2728.3 by Sec. 10, Ch. 146, L. 1975; R.C.M. 1947, 16-2728.3.**

Cross-References

Reinstatement of Deputy Sheriff, 7-32-2110.

Procedure for reinstatement on police force, 7-32-4110.

7-32-111 through 7-32-114 reserved.

7-32-115. Work period in lieu of workweek — overtime compensation. (1) (a) A department of public safety may establish a work period other than the workweek provided in 7-32-2111 or 39-3-405 for determining when an employee may be paid overtime.

(b) The aggregate of all work periods in a year, when expressed in hours, may not exceed 2,080 hours.

(2) The board of county commissioners may by resolution establish that any employee who works in excess of his regularly scheduled work period will be compensated for the hours worked in excess of the work period at a rate to be determined by the board of county commissioners.

History: **En. Sec. 2, Ch. 256, L. 1985.**

7-32-116 through 7-32-120 reserved.

7-32-121. Public safety commission. (1) The department of public safety shall be under the supervision of a public safety commission.

(2) The commission shall consist of three, five, or seven members. Each member of the commission shall serve a 4-year term and shall be appointed as provided in 7-32-121 through 7-32-124.

(3) No commission member may be an official of any unit of local government.

History: **(1), (2)En. Sec. 1, Ch. 347, L. 1973; amd. Sec. 1, Ch. 146, L. 1975; Sec. 16-2726, R.C.M. 1947; (3)En. 69-2726.1 by Sec. 2, Ch. 146, L. 1975; Sec. 69-2726.1, R.C.M. 1947; R.C.M. 1947, 16-2726(part), 16-2726.1(5).**

7-32-122. Appointment to three-member public safety commission. (1) Upon the creation of a three-member commission:

(a) one member shall be appointed by the legislative body of the city or town;

(b) one shall be appointed by the board of county commissioners; and

(c) one shall be appointed by the members of the board of county commissioners and the members of the legislative body of the city or town, meeting in joint session.

(2) In order to be appointed, a candidate for appointment by the joint meeting must receive a majority of the votes of the members of the board of county commissioners and a majority of the votes of the members of the legislative body of the city or town voting on the question of his appointment.

(3) Initially, one commission member shall serve a 4-year term and two commission members shall each serve a 2-year term. Each commission member shall draw a lot to determine the length of his term.

History: **En. 69-2726.1 by Sec. 2, Ch. 146, L. 1975; R.C.M. 1947, 16-2726.1(1).**

Cross-References

General authority of County Commissioners, 7-5-2101.

General powers of Municipal Council, 7-5-4101.

7-32-123. Appointment to five-member public safety commission. (1) Upon the creation of a five-member commission:

(a) two members shall be appointed by the legislative body of the city or town;

(b) two shall be appointed by the board of county commissioners; and

(c) one shall be appointed by the members of the board of county commissioners and the members of the legislative body of the city or town, meeting in joint session.

(2) In order to be appointed, a candidate for the appointment to a five-member commission by the joint meeting must receive a majority of the votes of the members of the board of county commissioners and a majority of the votes of members of the legislative body of the city or town voting on the question of his appointment.

(3) Initially, two commission members shall each serve a 4-year term and three commission members shall each serve a 2-year term. Each commission member must draw a lot to determine the length of his term.

History: En. 69-2726.1 by Sec. 2, Ch. 146, L. 1975; R.C.M. 1947, 16-2726.1(2).

Cross-References

General authority of County Commissioners, 7-5-2101.

General powers of Municipal Council, 7-5-4101.

7-32-124. Appointment to seven-member public safety commission. (1) Upon the creation of a seven-member commission:

(a) three members shall be appointed by the legislative body of the city or town;

(b) three shall be appointed by the board of county commissioners; and

(c) one shall be appointed by the members of the board of county commissioners and the members of the city or town, meeting in joint session.

(2) In order to be appointed, a candidate for the appointment to a seven-member commission by the joint meeting must receive a majority of the votes of the members of the board of county commissioners and a majority of the votes of the members of the legislative body of the city or town voting on the question of his appointment.

(3) Initially, three commission members shall each serve a 4-year term and four commission members shall each serve a 2-year term. Each commission member shall draw a lot to determine the length of his term.

History: En. 69-2726.1 by Sec. 2, Ch. 146, L. 1975; R.C.M. 1947, 16-2726.1(3).

Cross-References

General authority of County Commissioners, 7-5-2101.

General powers of Municipal Council, 7-5-4101.

7-32-125. Residency requirements for public safety commissioners. Each commission member shall reside at the time of his appointment within the county if selected by the board of county commissioners or within the city or town by which appointed.

History: En. 69-2726.1 by Sec. 2, Ch. 146, L. 1975; R.C.M. 1947, 16-2726.1(4).

Cross-References

Residence — rules for determining, 1-1-215.

7-32-126. Vacancies and succession. (1) In case of a vacancy for any cause, a new member shall be appointed in the same manner as the person he replaces. A person so appointed shall serve out the unexpired portion of the term of the person he replaces.

(2) The successor for a commission member whose term has expired shall be appointed in the same manner used to appoint the commission member he succeeds.

(3) A member of a public safety commission is eligible for reappointment to the commission at the end of his term.

History: En. 69-2726.2 by Sec. 3, Ch. 146, L. 1975; R.C.M. 1947, 16-2726.2(1) thru (3).

Cross-References

General authority of County Commissioners, 7-5-2101.

General powers of Municipal Council, 7-5-4101.

7-32-127. Organization of public safety commission. (1) Not later than 60 days after the commission is authorized, the members of the commission shall meet and organize at a time which shall be set by the board of county commissioners and the legislative body of the city or town.

(2) At the first meeting of the commission, the member jointly appointed by the board of county commissioners and the legislative body of the city or town shall be designated by the commission to serve as temporary chairman. As its first official act, the commission members shall select a chairman and vice-chairman from their own number.

(3) The chairman of the commission shall preside over all meetings and hearings of the commission. In the absence or inability of the chairman, the vice-chairman shall preside over all meetings and hearings of the commission.

History: En. 69-2726.3 by Sec. 4, Ch. 146, L. 1975; R.C.M. 1947, 69-2726.3(1) thru (3).

7-32-128. Meetings. Meetings of the commission shall be held upon call of the chairman, the vice-chairman in the absence or inability of the chairman, or a majority of the commission members. Hearings in all cases involving employee discharge or termination shall be held upon request of any employee so discharged or terminated.

History: En. 69-2726.3 by Sec. 4, Ch. 146, L. 1975; R.C.M. 1947, 69-2726.3(4).

Cross-References

Open meetings, Title 2, ch. 3, part 2.

Right to hearing on termination of Deputy Sheriff's employment, 7-32-2109.

Role of Police Commission in hearing and deciding charges against policemen, 7-32-4155.

7-32-129. Compensation and expenses. Members of a public safety commission shall receive no compensation but may receive actual and necessary travel and other expenses incurred in the performance of official duties. Such costs shall be borne by the county if the commission member is appointed by the board of county commissioners, by the city or town by which appointed, or borne equally by the county and city or town if jointly appointed.

History: En. 69-2726.2 by Sec. 3, Ch. 146, L. 1975; R.C.M. 1947, 16-2726.2(4).

Cross-References

Mileage allowance for County Commissioners — expenses, 7-4-2108.

Part 2

Reserve and Auxiliary Officers

7-32-201. Definitions. As used in this part, the following definitions apply:

(1) "Auxiliary officer" means an unsworn, part-time, volunteer member of a law enforcement agency who may perform but is not limited to the performance of such functions as civil defense, search and rescue, office duties, crowd and traffic control, and crime prevention activities.

(2) "General law enforcement duties" means patrol operations performed for detection, prevention, and suppression of crime and the enforcement of criminal and traffic codes of this state and its local governments.

(3) "Law enforcement agency" means a law enforcement service provided directly by a local government.

(4) "Law enforcement officer" means a sworn, full-time, employed member of a law enforcement agency who is a peace officer as defined in 46-1-202 and has arrest authority as described in 46-6-210.

(5) "Reserve officer" means a sworn, part-time, volunteer member of a law enforcement agency who is a peace officer as defined in 46-1-202 and has arrest authority as described in 46-6-210 only when authorized to perform these functions as a representative of the law enforcement agency.

History: En. 11-1851 by Sec. 1, Ch. 85, L. 1977; R.C.M. 1947, 11-1855(part); amd. Sec. 251, Ch. 800, L. 1991.

7-32-202. Prohibition on participation in certain pension and retirement systems. (1) A reserve officer may not participate in any pension or retirement system established for full-time law enforcement officers.

(2) An auxiliary officer may not participate in any pension or retirement system established for full-time law enforcement officers.

History: (1)En. 11-1852 by Sec. 2, Ch. 85, L. 1977; Sec. 11-1856, R.C.M. 1947; (2)En. 11-1854 by Sec. 4, Ch. 85, L. 1977; Sec. 11-1858, R.C.M. 1947; R.C.M. 1947, 11-1856(9), 11-1858(3).

Cross-References

Highway patrol officers' retirement, Title 19, ch. 6.

Sheriffs' retirement, Title 19, ch. 7.

Police retirement — statewide plan, Title 19, ch. 9.

Police retirement — local funds, Title 19, ch. 19.

7-32-203. Provision of workers' compensation coverage. (1) Each law enforcement agency that utilizes reserve officers shall provide full workers' compensation coverage for the officers while they are providing actual service for a law enforcement agency. The law enforcement agencies shall pay to the insurer an appropriate premium, as established by the insurer, to cover the insurance risk of providing coverage to the officers.

(2) Each law enforcement agency that utilizes auxiliary officers shall provide full workers' compensation coverage for the officers while they are providing actual service for a law enforcement agency.

History: (1)En. 11-1852 by Sec. 2, Ch. 85, L. 1977; Sec. 11-1856, R.C.M. 1947; (2)En. 11-1854 by Sec. 4, Ch. 85, L. 1977; Sec. 11-1858, R.C.M. 1947; R.C.M. 1947, 11-1856(10), 11-1858(4); amd. Sec. 1, Ch. 92, L. 1987.

Cross-References

Workers' compensation, Title 39, ch. 71.

7-32-204 through 7-32-210 reserved.

7-32-211. Reserve officers authorized. A local government may authorize reserve officers. A person who meets minimum standards for appointment as a peace officer may be appointed as a reserve officer.

History: **En. 11-1852 by Sec. 2, Ch. 85, L. 1977; R.C.M. 1947, 11-1856(part).**

Cross-References

Qualifications of law enforcement officers, Title 7, ch. 32, part 3.

7-32-212. Prohibition on reduction of full-time officers. A local government may not reduce the authorized number of full-time law enforcement officers through the appointment or utilization of reserve officers.

History: **En. 11-1852 by Sec. 2, Ch. 85, L. 1977; R.C.M. 1947, 11-1856(11).**

7-32-213. Qualifications for appointment as reserve officer. To be appointed a reserve officer, a person must:

(1) have resided in the state continuously for at least 1 year prior to the appointment and in the county where such appointment is made for a period of at least 6 months prior to the date of the appointment;

(2) be a citizen of the United States;

(3) be at least 18 years of age;

(4) be fingerprinted, and a search must be made of local, state, and national fingerprint files to disclose any criminal record;

(5) not have been convicted of a crime for which he could have been imprisoned in a federal penitentiary or state prison;

(6) be of good moral character as determined by a thorough background investigation;

(7) be a graduate of an accredited high school or the equivalent;

(8) be examined by a licensed physician within 30 days immediately preceding the date of appointment and pronounced in good physical condition; and

(9) possess a valid Montana driver's license.

History: **En. 11-1852 by Sec. 2, Ch. 85, L. 1977; R.C.M. 1947, 11-1856(part).**

Cross-References

Residence — rules for determining, 1-1-215.

Citizens defined, 1-1-402.

Drivers' licensing provisions, Title 61, ch. 5, part 1.

7-32-214. Basic training program required. (1) No reserve officer may be authorized to function as a representative of a law enforcement agency performing general law enforcement duties after 2 years from the original appointment unless the reserve officer has satisfactorily completed a minimum 88-hour basic training program which must include but need not be limited to the following course content:

(a) introduction and orientation—1 hour;
(b) police ethics and professionalism—1 hour;
(c) criminal law—4 hours;
(d) laws of arrest—4 hours;
(e) criminal evidence—4 hours;
(f) administration of criminal law—2 hours;
(g) communications, reports, and records—2 hours;
(h) crime investigations—3 hours;
(i) interviews and interrogations—2 hours;
(j) patrol procedures—6 hours;
(k) crisis intervention—4 hours;
(l) police human and community relations—3 hours;

(m) juvenile procedures—2 hours;
(n) defensive tactics—4 hours;
(o) crowd control tactics—4 hours;
(p) firearms training—30 hours;
(q) first aid—10 hours; and
(r) examination—2 hours.

(2) The law enforcement agency is responsible for training its reserve officers in accordance with minimum training standards established by the Montana board of crime control.

History: **En. 11-1852 by Sec. 2, Ch. 85, L. 1977; R.C.M. 1947, 11-1856(2),(3).**

Cross-References

Board of Crime Control — functions, 44-4-301.

Montana Law Enforcement Academy, Title 44, ch. 10.

7-32-215. Reserve manual required. The authorizing law enforcement agency establishing a law enforcement reserve force shall adopt and publish a manual setting forth the minimum qualifications, minimum training standards, and standard operating procedures for reserve officers.

History: **En. 11-1853 by Sec. 3, Ch. 85, L. 1977; R.C.M. 1947, 11-1857.**

7-32-216. Limitations on activities of reserve officers. (1) A reserve officer may serve as a peace officer only on the orders and at the direction of the chief law enforcement administrator of the local government.

(2) A reserve officer may act only in a supplementary capacity to the law enforcement agency.

(3) Reserve officers:

(a) are subordinate to full-time law enforcement officers; and

(b) may not serve unless supervised by a full-time law enforcement officer whose span of control would be considered within reasonable limits.

History: **En. 11-1852 by Sec. 2, Ch. 85, L. 1977; R.C.M. 1947, 11-1856(part).**

Cross-References

Restrictions on activities of policemen, 7-32-4114.

7-32-217. Restrictions on carrying weapons. No reserve officer may carry a weapon:

(1) while on assigned duty until the reserve officer has qualified on the firing range with a weapon in compliance with the firearms qualifying course conducted by the Montana law enforcement academy; and

(2) until authorized by the chief law enforcement administrator to carry a weapon.

History: **En. 11-1852 by Sec. 2, Ch. 85, L. 1977; R.C.M. 1947, 11-1856(7).**

Cross-References

Montana Law Enforcement Academy, Title 44, ch. 10.

7-32-218. Status of reserve officer upon activation. A reserve officer is vested with the same powers, rights, privileges, obligations, and duties as any other peace officer of this state upon being activated by the chief law enforcement administrator of the local government and while on assigned duty only.

History: **En. 11-1852 by Sec. 2, Ch. 85, L. 1977; R.C.M. 1947, 11-1856(8).**

7-32-219. Reserve force coordinator. The chief law enforcement administrator of a law enforcement agency with reserve officers shall appoint a full-time law enforcement officer of the agency as a reserve force coordinator. The reserve force coordinator shall coordinate the activities of the reserve force with those of the law enforcement agency.

History: En. 11-1852 by Sec. 2, Ch. 85, L. 1977; R.C.M. 1947, 11-1856(part).

7-32-220. Appointment of reserve officer to full-time position. A reserve officer may be appointed as a full-time law enforcement officer through the procedures provided in Montana law for such appointments.

History: En. 11-1852 by Sec. 2, Ch. 85, L. 1977; R.C.M. 1947, 11-1856(part).

Cross-References

Qualifications of Deputy Sheriff, 7-32-2104.

Appointment to police force, 7-32-4108.

7-32-221. Termination of reserve officers. Reserve officers serve at the pleasure of the chief law enforcement administrator and may be terminated at any time by the chief law enforcement administrator by written notification without any cause.

History: En. 11-1852 by Sec. 2, Ch. 85, L. 1977; R.C.M. 1947, 11-1856(12).

Cross-References

Deputy Sheriffs — written notice of termination of employment required, 7-32-2108.

Police — charges to be in writing, 7-32-4156.

7-32-222 through 7-32-230 reserved.

7-32-231. Auxiliary officers authorized. A local government may authorize auxiliary officers only on the orders and at the direction of the chief law enforcement administrator of the local government.

History: En. 11-1854 by Sec. 4, Ch. 85, L. 1977; R.C.M. 1947, 11-1858(part).

Cross-References

Duties of Sheriff, 7-32-2121.

Duties of Chief of Police, 7-32-4105.

7-32-232. Role of auxiliary officers. (1) Auxiliary officers:

(a) are subordinate to full-time law enforcement officers; and

(b) may not serve unless supervised by a full-time law enforcement officer.

(2) No auxiliary officer may carry a weapon while on assigned duty.

History: En. 11-1854 by Sec. 4, Ch. 85, L. 1977; R.C.M. 1947, 11-1858(1)(a), (b), (2).

7-32-233. Limitation on arrest authority of auxiliary officer. An auxiliary officer has only the arrest authority granted a private person in 46-6-502.

History: En. 11-1851 by Sec. 1, Ch. 85, L. 1977; R.C.M. 1947, 11-1855(part); amd. Sec. 252, Ch. 800, L. 1991.

7-32-234. Exceptions. Provisions of 7-32-211, 7-32-213, and 7-32-214 do not apply to auxiliary officers, to sworn volunteer peace officers who are not assigned to general law enforcement duties, or to members of a posse organized to quell public disturbance or domestic violence in accordance with 7-32-2121(6).

History: En. 11-1855 by Sec. 5, Ch. 85, L. 1977; R.C.M. 1947, 11-1859.

7-32-235. Search and rescue units authorized — under control of county sheriff — optional funding. (1) A county may establish or recognize one or more search and rescue units within the county.

(2) Except in time of martial rule as provided in 10-1-106, search and rescue units and their officers are under the operational control and supervision of the county sheriff, or the sheriff's designee, having jurisdiction and whose span of control would be considered within reasonable limits.

(3) A county may, after approval by a majority of the people voting on the question at an election held throughout the county, levy an annual tax of not more than 1 mill on each dollar of taxable value of all taxable property within the county to support one or more search and rescue units established or recognized under subsection (1). The election must be held in conjunction with a regular or primary election.

History: En. Sec. 2, Ch. 42, L. 1981; amd. Sec. 1, Ch. 280, L. 1985; amd. Sec. 1, Ch. 353, L. 1991; amd. Sec. 61, Ch. 387, L. 1995.

Compiler's Comments

1995 Amendment: Chapter 387 in (3), at end, inserted "The election must be held in conjunction with a regular or primary election"; and made minor changes in style.

Part 3

Qualifications of Law Enforcement Officers

Part Cross-References

Qualifications of Deputy Sheriff, 7-32-2104.

Qualifications of policemen, 7-32-4112.

7-32-301. Residency requirements. No sheriff of a county, mayor of a city, or other person authorized by law to appoint special deputies, marshals, or policemen in this state to preserve the public peace and prevent or quell public disturbance shall hereafter appoint as such special deputy, marshal, or policeman any person who shall not have resided continuously in this state for a period of at least 1 year and in the county where such appointment is made for a period of at least 6 months prior to the date of said appointment.

History: En. Sec. 4598, Pol. C. 1895; re-en. Sec. 3124, Rev. C. 1907; re-en. Sec. 4879, R.C.M. 1921; re-en. Sec. 4879, R.C.M. 1935; amd. Sec. 1, Ch. 257, L. 1967; amd. Sec. 2, Ch. 66, L. 1971; amd. Sec. 1, Ch. 81, L. 1971; amd. Sec. 1, Ch. 62, L. 1973; amd. Sec. 2, Ch. 188, L. 1975; R.C.M. 1947, 16-3705(part).

Cross-References

Residence — rules for determining, 1-1-215.

7-32-302. Waiver of residency requirements. The person or body authorized by law to appoint special deputies, marshals, or policemen may in its discretion waive residency requirements.

History: En. Sec. 4598, Pol. C. 1895; re-en. Sec. 3124, Rev. C. 1907; re-en. Sec. 4879, R.C.M. 1921; re-en. Sec. 4879, R.C.M. 1935; amd. Sec. 1, Ch. 257, L. 1967; amd. Sec. 2, Ch. 66, L. 1971; amd. Sec. 1, Ch. 81, L. 1971; amd. Sec. 1, Ch. 62, L. 1973; amd. Sec. 2, Ch. 188, L. 1975; R.C.M. 1947, 16-3705(part).

Cross-References

Duties of Sheriff, 7-32-2121.

Supervision of police department, 7-32-4103.

7-32-303. Peace officer employment, education, and certification standards — suspension or revocation — penalty. (1) For purposes of this section, unless the context clearly indicates otherwise, "peace officer" means a deputy sheriff, undersheriff, police officer, highway patrol officer, fish and game warden, park ranger, campus security officer, or airport police officer.

(2) No sheriff of a county, mayor of a city, board, commission, or other person authorized by law to appoint peace officers in this state shall appoint any person as a peace officer who does not meet the following qualifications plus any additional qualifying standards for employment promulgated by the board of crime control:

(a) be a citizen of the United States;

(b) be at least 18 years of age;

(c) be fingerprinted and a search made of the local, state, and national fingerprint files to disclose any criminal record;

(d) not have been convicted of a crime for which the person could have been imprisoned in a federal or state penitentiary;

(e) be of good moral character, as determined by a thorough background investigation;

(f) be a high school graduate or have passed the general education development test and have been issued an equivalency certificate by the superintendent of public instruction or by an appropriate issuing agency of another state or of the federal government;

(g) be examined by a licensed physician, who is not the applicant's personal physician, appointed by the employing authority to determine if the applicant is free from any mental or physical condition that might adversely affect performance by the applicant of the duties of a peace officer;

(h) successfully complete an oral examination conducted by the appointing authority or its designated representative to demonstrate the possession of communication skills, temperament, motivation, and other characteristics necessary to the accomplishment of the duties and functions of a peace officer; and

(i) possess or be eligible for a valid Montana driver's license.

(3) At the time of appointment a peace officer shall take a formal oath of office.

(4) Within 10 days of the appointment, termination, resignation, or death of any peace officer, written notice thereof must be given to the board of crime control by the employing authority.

(5) (a) Except as provided in subsections (5)(b) and (5)(c), it is the duty of an appointing authority to cause each peace officer appointed under its authority to attend and successfully complete, within 1 year of the initial appointment, an appropriate peace officer basic course certified by the board of crime control. Any peace officer appointed after September 30, 1983, who fails to meet the minimum requirements as set forth in subsection (2) or who fails to complete the basic course as required by this subsection (a) forfeits the position, authority, and arrest powers accorded a peace officer in this state.

(b) A peace officer who has been issued a basic certificate by the board of crime control and whose last date of employment as a peace officer was less than 36 months prior to the date of the person's present appointment as a peace officer is not required to fulfill the basic educational requirements of subsection (5)(a). If the peace officer's last date of employment as a peace officer was 36 or more but less than 60 months prior to the date of present employment as a peace officer, the peace officer may satisfy the basic educational requirements as set forth in subsection (5)(c).

(c) A peace officer under the provisions of subsection (5)(b) or a peace officer who has completed a basic peace officer's course in another state and whose last date of employment as a peace officer was less than 60 months prior to the date of present appointment as a peace officer may, within 1 year of the peace officer's present employment or initial appointment as a peace officer within this state, satisfy the basic educational requirements by successfully passing a basic equivalency test administered by the Montana law enforcement academy and successfully completing a legal training course conducted by the academy. If the peace officer fails the basic equivalency test, the peace officer shall complete the basic course within 120 days of the date of the test.

(6) The board of crime control may extend the 1-year time requirements of subsections (5)(a) and (5)(c) upon the written application of the peace officer and the appointing authority of the officer. The application must explain the circumstances that make the extension necessary. Factors that the board may consider in granting or denying the extension include but are not limited to illness of the peace officer or a member of the peace officer's immediate family, absence of reasonable access to the basic course or the legal training course, and an unreasonable shortage of personnel within the department. The board may not grant an extension to exceed 180 days.

(7) A peace officer who has successfully met the employment standards and qualifications and the educational requirements of this section and who has completed a 1-year probationary term of employment must, upon application to the board of crime control, be issued a basic certificate by the board, certifying that the peace officer has met all the basic qualifying peace officer standards of this state.

(8) It is unlawful for a person whose certification as a peace officer, detention officer, or detention center administrator has been revoked or suspended by the board of crime control to act as a peace officer, detention officer, or detention center administrator. A person convicted of violating this subsection is guilty of a misdemeanor, punishable by a term of imprisonment not to exceed 6 months in the county jail or by a fine not to exceed $500, or both.

History: En. Sec. 4598, Pol. C. 1895; re-en. Sec. 3124, Rev. C. 1907; re-en. Sec. 4879, R.C.M. 1921; re-en. Sec. 4879, R.C.M. 1935; amd. Sec. 1, Ch. 257, L. 1967; amd. Sec. 2, Ch. 66, L. 1971; amd. Sec. 1, Ch. 81, L. 1971; amd. Sec. 1, Ch. 62, L. 1973; amd. Sec. 2, Ch. 188, L. 1975; R.C.M. 1947, 16-3705(part); amd. Sec. 1, Ch. 191, L. 1983; amd. Sec. 1, Ch. 714, L. 1985; amd. Sec. 1, Ch. 217, L. 1989; amd. Sec. 9, Ch. 662, L. 1991; amd. Sec. 2, Ch. 437, L. 1993.

Cross-References

Board of Crime Control — functions, 44-4-301.

7-32-304. Exception for organizing posse. The provisions of this part shall not apply in cases of the officers listed in 7-32-301 summoning a posse forthwith to quell public disturbance or domestic violence.

History: En. Sec. 4598, Pol. C. 1895; re-en. Sec. 3124, Rev. C. 1907; re-en. Sec. 4879, R.C.M. 1921; re-en. Sec. 4879, R.C.M. 1935; amd. Sec. 1, Ch. 257, L. 1967; amd. Sec. 2, Ch. 66, L. 1971; amd. Sec. 1, Ch. 81, L. 1971; amd. Sec. 1, Ch. 62, L. 1973; amd. Sec. 2, Ch. 188, L. 1975; R.C.M. 1947, 16-3705(part).

Cross-References

Exception for organizing posse, 7-32-2112.

Duties of Sheriff, 7-32-2121.

Parts 4 through 20 reserved

Part 21
Sheriff's Department

Part Cross-References

Detention center defined, 7-32-2120.

Sheriffs' retirement, Title 19, ch. 7.

Automatic security alarm system — permission of chief law enforcement officer, 37-60-408.

Restriction on local government regulation of firearms, 45-8-351.

7-32-2101. Vacancy in office of sheriff. When the sheriff is committed under an execution or commitment for not paying over money received by him by virtue of his office and remains committed for 60 days, his office is vacant.

History: En. Sec. 4394, Pol. C. 1895; re-en. Sec. 3023, Rev. C. 1907; re-en. Sec. 4787, R.C.M. 1921; Cal. Pol. C. Sec. 4186; re-en. Sec. 4787, R.C.M. 1935; R.C.M. 1947, 16-2715.

Cross-References

Liability for refusing to pay over money, 7-32-2130.

7-32-2102. Undersheriff to be appointed — return to other duties. (1) The sheriff, as soon as possible after he enters upon the duties of his office, must, except in counties of the seventh class, appoint some person undersheriff to hold during the pleasure of the sheriff. Such undersheriff has the same powers and duties as a deputy sheriff.

(2) A deputy sheriff appointed undersheriff as provided in subsection (1) must resume other duties within the sheriff's department, while maintaining his tenure and seniority, if the sheriff appoints another to succeed him as undersheriff. Upon the return to the position of deputy sheriff, such person shall be paid the same salary he would have received had he not taken the undersheriff position.

History: En. Sec. 851, 5th Div. Comp. Stat. 1887; amd. Sec. 4382, Pol. C. 1895; re-en. Sec. 3011, Rev. C. 1907; re-en. Sec. 4775, R.C.M. 1921; amd. Sec. 1, Ch. 24, L. 1933; re-en. Sec. 4775, R.C.M. 1935; R.C.M. 1947, 16-2703; amd. Sec. 16, Ch. 220, L. 1985; amd. Sec. 1, Ch. 375, L. 1985.

Cross-References

Classification of counties, 7-1-2111.

7-32-2103. Repealed. Sec. 1, Ch. 194, L. 1981.

History: En. Sec. 1, Ch. 75, L. 1905; re-en. Sec. 3119, Rev. C. 1907; amd. Sec. 2, Ch. 93, L. 1909; amd. Sec. 1, Ch. 119, L. 1909; re-en. Sec. 4875, R.C.M. 1921; re-en. Sec. 4875, R.C.M. 1935; amd. Sec. 1, Ch. 69, L. 1953; R.C.M. 1947, 16-3701(part); amd. Sec. 2, Ch. 263, L. 1979.

7-32-2104. Qualifications of deputy sheriff. (1) No sheriff shall employ as a deputy any individual who does not possess all the following qualifications:

(a) graduate of an accredited high school or the equivalent thereof;

(b) good moral character;

(c) never been convicted of a felony;

(d) has not within 5 years immediately preceding his date of employment been affiliated in any manner with a subversive organization;

(e) been examined by a physician licensed to practice in the state of Montana within 30 days immediately preceding his date of employment and has been pronounced in good physical condition.

(2) This section shall not be applicable to any deputy sheriff whose term of employment commenced prior to March 2, 1967.

History: En. Sec. 4598, Pol. C. 1895; re-en. Sec. 3124, Rev. C. 1907; re-en. Sec. 4879, R.C.M. 1921; re-en. Sec. 4879, R.C.M. 1935; amd. Sec. 1, Ch. 257, L. 1967; amd. Sec. 2, Ch. 66, L. 1971; amd. Sec. 1, Ch. 81, L. 1971; amd. Sec. 1, Ch. 62, L. 1973; amd. Sec. 2, Ch. 188, L. 1975; R.C.M. 1947, 16-3705(2).

Cross-References

Authorization to exceed limitation on number of deputy officers, 7-4-2402.

Accreditation of schools, 20-7-102.

Veterans' public employment preference, Title 39, ch. 29.

Handicapped persons' public employment preference, Title 39, ch. 30.

7-32-2105. Probationary period for deputy sheriff. Any person whose term of employment as a deputy sheriff commences subsequent to March 2, 1967, shall serve a 1-year probationary period, and during this 1-year period the employment of any such deputy may be terminated by the sheriff with or without cause and without recourse to the sheriff under the terms of 7-32-2104 through 7-32-2110.

History: En. Sec. 4598, Pol. C. 1895; re-en. Sec. 3124, Rev. C. 1907; re-en. Sec. 4879, R.C.M. 1921; re-en. Sec. 4879, R.C.M. 1935; amd. Sec. 1, Ch. 257, L. 1967; amd. Sec. 2, Ch. 66, L. 1971; amd. Sec. 1, Ch. 81, L. 1971; amd. Sec. 1, Ch. 62, L. 1973; amd. Sec. 2, Ch. 188, L. 1975; R.C.M. 1947, 16-3705(3).

Cross-References

Police — probationary period, 7-32-4113.

7-32-2106. Attendance at Montana law enforcement academy required for deputy sheriffs. (1) It shall be the duty of the sheriff to cause all deputies whose term of employment commenced subsequent to March 2, 1967, to attend that academy provided for by Title 44, chapter 10, except that the sheriff may accept reasonable delays in attendance at the academy as shown by the deputy's declared intention of attending.

(2) Failure to satisfactorily complete the course offered by said academy shall be deemed cause to terminate a deputy's employment.

History: En. Sec. 4598, Pol. C. 1895; re-en. Sec. 3124, Rev. C. 1907; re-en. Sec. 4879, R.C.M. 1921; re-en. Sec. 4879, R.C.M. 1935; amd. Sec. 1, Ch. 257, L. 1967; amd. Sec. 2, Ch. 66, L. 1971; amd. Sec. 1, Ch. 81, L. 1971; amd. Sec. 1, Ch. 62, L. 1973; amd. Sec. 2, Ch. 188, L. 1975; R.C.M. 1947, 16-3705(4).

7-32-2107. Tenure for deputy sheriffs — grounds for termination of employment. Any deputy sheriff now employed or who may hereafter be employed shall continue in service until relieved of his employment in the manner hereinafter provided and only for one or more of the following specified causes:

(1) conviction of a felony subsequent to the commencement of such employment;

(2) willful disobedience of an order or orders given by the sheriff;

(3) drinking intoxicating liquor while in uniform or while on official duty or being intoxicated in a public place while in uniform or while on official duty;

(4) sleeping while on duty;

(5) incapacity materially affecting ability to perform official duties;

(6) gross inefficiency in the performance of official duties.

History: En. Sec. 4598, Pol. C. 1895; re-en. Sec. 3124, Rev. C. 1907; re-en. Sec. 4879, R.C.M. 1921; re-en. Sec. 4879, R.C.M. 1935; amd. Sec. 1, Ch. 257, L. 1967; amd. Sec. 2, Ch. 66, L. 1971; amd. Sec. 1, Ch. 81, L. 1971; amd. Sec. 1, Ch. 62, L. 1973; amd. Sec. 2, Ch. 188, L. 1975; R.C.M. 1947, 16-3705(5).

Cross-References

Role of Police Commission in hearing and deciding charges against policemen, 7-32-4155.

Classification of offenses, 45-1-201.

Felony defined, 45-2-101.

7-32-2108. Written notice of termination of employment required. When a sheriff terminates the employment of a deputy, he shall at the time of termination cause to be served upon said deputy a statement in writing, subscribed and sworn to by the sheriff, setting forth the cause or causes for the discharge or termination of the deputy's employment.

History: En. Sec. 4598, Pol. C. 1895; re-en. Sec. 3124, Rev. C. 1907; re-en. Sec. 4879, R.C.M. 1921; re-en. Sec. 4879, R.C.M. 1935; amd. Sec. 1, Ch. 257, L. 1967; amd. Sec. 2, Ch. 66, L. 1971; amd. Sec. 1, Ch. 81, L. 1971; amd. Sec. 1, Ch. 62, L. 1973; amd. Sec. 2, Ch. 188, L. 1975; R.C.M. 1947, 16-3705(6).

Cross-References

Termination of employment, Title 39, ch. 2, part 5.

7-32-2109. Right to hearing on termination of deputy sheriff's employment. (1) A deputy sheriff whose employment is terminated has a right of appeal:

(a) to the district court of the county where the deputy was employed; or

(b) pursuant to the terms of a grievance procedure contained in a collective bargaining agreement if the deputy sheriff is covered by a collective bargaining agreement.

(2) The appeal to the district court must be made within 30 days from the date of the termination of employment.

History: En. Sec. 4598, Pol. C. 1895; re-en. Sec. 3124, Rev. C. 1907; re-en. Sec. 4879, R.C.M. 1921; re-en. Sec. 4879, R.C.M. 1935; amd. Sec. 1, Ch. 257, L. 1967; amd. Sec. 2, Ch. 66, L. 1971; amd. Sec. 1, Ch. 81, L. 1971; amd. Sec. 1, Ch. 62, L. 1973; amd. Sec. 2, Ch. 188, L. 1975; R.C.M. 1947, 16-3705(part); amd. Sec. 1, Ch. 468, L. 1993.

Cross-References

District Court jurisdiction, Title 3, ch. 5, part 3.

7-32-2110. Reinstatement of deputy sheriff. In the event that a termination is reversed or modified, the deputy must be reinstated as a deputy sheriff at the same salary received by the deputy prior to the discharge or termination of employment. The deputy is also entitled to rights that might have accrued to the deputy's benefit prior to the discharge or termination of employment, including the salary that the deputy would have received but for the termination.

History: En. Sec. 4598, Pol. C. 1895; re-en. Sec. 3124, Rev. C. 1907; re-en. Sec. 4879, R.C.M. 1921; re-en. Sec. 4879, R.C.M. 1935; amd. Sec. 1, Ch. 257, L. 1967; amd. Sec. 2, Ch. 66, L. 1971; amd. Sec. 1, Ch. 81, L. 1971; amd. Sec. 1, Ch. 62, L. 1973; amd. Sec. 2, Ch. 188, L. 1975; R.C.M. 1947, 16-3705(part); amd. Sec. 2, Ch. 468, L. 1993.

Cross-References

Procedure for reinstatement on police force, 7-32-4110.

Veterans' public employment preference, Title 39, ch. 29.

Handicapped persons' public employment preference, Title 39, ch. 30.

7-32-2111. Hours of work for deputy sheriff of county of first or second class. Any person employed as a deputy sheriff of a first- or second-class county shall not be forced to work in excess of 40 hours per week except in case of an emergency and shall be entitled to 2 days off in each 7-day period.

History: En 16-3705.1 by Sec. 1, Ch. 329, L. 1973; R.C.M. 1947, 16-3705.1.

Cross-References

Classification of counties, 7-1-2111.

Department of Public Safety — work period in lieu of workweek — overtime compensation, 7-32-115.

Overtime compensation — exclusions, 39-3-406.

Hours of labor in certain employments, Title 39, ch. 4.

7-32-2112. Exception for organizing posse. The provisions of 7-32-301 through 7-32-303 shall not apply in cases of the officers listed in 7-32-301 summoning a posse forthwith to quell public disturbance or domestic violence.

History: En. Sec. 4598, Pol. C. 1895; re-en. Sec. 3124, Rev. C. 1907; re-en. Sec. 4879, R.C.M. 1921; re-en. Sec. 4879, R.C.M. 1935; amd. Sec. 1, Ch. 257, L. 1967; amd. Sec. 2, Ch. 66, L. 1971; amd. Sec. 1, Ch. 81, L. 1971; amd. Sec. 1, Ch. 62, L. 1973; amd. Sec. 2, Ch. 188, L. 1975; R.C.M. 1947, 16-3705(part).

Cross-References

Exception for organizing posse, 7-32-304.

7-32-2113 through 7-32-2119 reserved.

7-32-2120. Definitions. As used in this part, the following definitions apply:

(1) "Detention center" means a facility established and maintained by an appropriate entity for the purpose of confining arrested persons or persons sentenced to the detention center.

(2) "Detention center administrator" means the sheriff, chief of police, administrator, superintendent, director, or other individual serving as the chief executive officer of a detention center.

(3) "Detention center staff" means custodial personnel whose duties include ongoing supervision of the inmates in a detention center.

(4) "Inmate" means a person who is confined in a detention center.

(5) "Local government" means a city, town, county, or consolidated city-county government.

(6) "Multijurisdictional detention center" means a detention center established and maintained by two or more local governments for the confinement of persons arrested or sentenced to confinement or a local government detention center contracting to confine persons arrested or sentenced in other local governments.

(7) "Private detention center" means a detention center owned by private industry and leased to or operated under a contract with a local government.

History: En. Sec. 1, Ch. 461, L. 1989.

Cross-References

Municipal detention centers authorized, 7-32-4201.

7-32-2121. Duties of sheriff. The sheriff must:

(1) preserve the peace;

(2) arrest and take before the nearest magistrate for examination all persons who attempt to commit or have committed a public offense;

(3) prevent and suppress all affrays, breaches of the peace, riots, and insurrections which may come to his knowledge;

(4) perform the duties of a humane officer within the county with reference to the protection of dumb animals;

(5) attend all courts, except municipal, justices', and city courts, at their respective terms or sessions held within the county and obey their lawful orders and directions;

(6) command the aid of as many inhabitants of the county as are necessary in the execution of the sheriff's duties;

(7) take charge of and keep the detention center and the inmates therein, unless the detention center is operated by a private party under an agreement entered into under 7-32-2201 or by a detention center administrator or by another local government;

(8) endorse upon all notices and process the year, month, day, hour, and minute of reception and issue therefor to the person delivering them, on payment of fees, a certificate showing the names of the parties, the title of the paper, and the time of reception;

(9) serve all process or notices in the manner prescribed by law;

(10) certify in writing upon the process or notices the manner and time of service or, if he fails to make service, the reasons of this failure, and return the papers without delay;

(11) take charge of and supervise search and rescue units and their officers whenever search and rescue units are called into service; and

(12) perform such other duties as are required by law.

History: (1) thru (10)En. Sec. 4381, Pol. C. 1895; re-en. Sec. 3010, Rev. C. 1907; re-en. Sec. 4774, R.C.M. 1921; Cal. Pol. C. Sec. 4176; amd. Sec. 1, Ch. 157, L. 1925; re-en. Sec. 4774, R.C.M. 1935; amd. Sec. 10, Ch. 535, L. 1975; Sec. 16-2702, R.C.M. 1947; (11)En. Sec. 1, Ch. 42, L. 1981; (12)En. Sec. 4401, Pol. C. 1895; re-en. Sec. 3030, Rev. C. 1907; re-en. Sec. 4794, R.C.M. 1921; Cal. Pol. C. Sec. 4193; re-en. Sec. 4794, R.C.M. 1935; Sec. 16-2722, R.C.M. 1947; R.C.M. 1947, 16-2702, 16-2722; amd. Sec. 3, Ch. 263, L. 1979; amd. Sec. 1, Ch. 42, L. 1981; amd. Sec. 7, Ch. 447, L. 1985; amd. Sec. 9, Ch. 461, L. 1989.

Cross-References

When Sheriff to provide facilities, 3-5-404.

Sheriff to act as crier, 3-5-407.

County jails, Title 7, ch. 32, part 22.

Execution of judgment, Title 25, ch. 13.

Service of process, Rule 4C, M.R.Civ.P. (see Title 25, ch. 20).

Clerk, Sheriff, or Coroner not to practice law, 37-61-203.

Arrest, Title 46, ch. 6.

Initial appearance of arrested person, Title 46, ch. 7.

7-32-2122. Duties of undersheriff. Whenever a vacancy occurs in the office of sheriff, the undersheriff must in all things execute the office of sheriff until a sheriff is elected or appointed and duly qualified.

History: En. Sec. 4383, Pol. C. 1895; re-en. Sec. 3012, Rev. C. 1907; re-en. Sec. 4776, R.C.M. 1921; re-en. Sec. 4776, R.C.M. 1935; R.C.M. 1947, 16-2704(part).

7-32-2123. Appointment of detention center staff. A sheriff who operates a detention center under 7-32-2121 may appoint deputy sheriffs or nonsworn individuals as detention center staff. A nonsworn individual appointed to the detention center staff need not receive the same salary as a deputy sheriff.

History: En. Sec. 1, Ch. 75, L. 1905; re-en. Sec. 3119, Rev. C. 1907; amd. Sec. 2, Ch. 93, L. 1909; amd. Sec. 1, Ch. 119, L. 1909; re-en. Sec. 4875, R.C.M. 1921; re-en. Sec. 4875, R.C.M. 1935; amd. Sec. 1, Ch. 69, L. 1953; R.C.M. 1947, 16-3701(part); amd. Sec. 4, Ch.

263, L. 1979; amd. Sec. 8, Ch. 447, L. 1985; amd. Sec. 1, Ch. 16, Sp. L. June 1986; amd. Sec. 10, Ch. 461, L. 1989.

Cross-References

Salaries of Deputy Sheriffs, 7-4-2505.

County jails, Title 7, ch. 32, part 22.

7-32-2124. Service of papers on sheriff. Service of a paper, other than a process, upon the sheriff may be made by delivering it to him or to one of his deputies or to a person in charge of the office during office hours, or if no such person is there, by leaving it in a conspicuous place in the office.

History: En. Sec. 4398, Pol. C. 1895; re-en. Sec. 3027, Rev. C. 1907; re-en. Sec. 4791, R.C.M. 1921; Cal. Pol. C. Sec. 4190; re-en. Sec. 4791, R.C.M. 1935; R.C.M. 1947, 16-2719.

Cross-References

Service, Rule 4D, M.R.Civ.P. (see Title 25, ch. 20).

7-32-2125. Operation of sheriff's vehicle. The board of county commissioners may purchase or lease motor vehicles from county funds for the use of the sheriff or any person employed by him and may also pay for the operation and maintenance of those vehicles from county funds.

History: En. Sec. 1, Ch. 114, L. 1969; amd. Sec. 1, Ch. 340, L. 1971; R.C.M. 1947, 16-2724(part).

Cross-References

General authority of County Commissioners, 7-5-2101.

Authorization for county to obtain property, 7-8-2201.

7-32-2126. Liability insurance for privately owned vehicles when used on official business. (1) The board of county commissioners shall provide liability insurance for not more than one privately owned vehicle used by the sheriff, not more than one privately owned vehicle used by the undersheriff, and not more than one privately owned vehicle used by each deputy sheriff when the vehicles are used on official business. The insurance shall be paid for from county funds and shall provide full comprehensive and collision coverage plus minimum coverage of $100,000 for each person for bodily injury and medical expenses, $300,000 for all persons per accident, and $50,000 per accident for property damage.

(2) This section shall not apply to counties furnishing motor vehicles to the sheriff's department pursuant to the provisions of 7-32-2125.

History: En. Sec. 2, Ch. 340, L. 1971; R.C.M. 1947, 16-2725.

Cross-References

General authority of County Commissioners, 7-5-2101.

Required motor vehicle insurance, 61-6-301.

7-32-2127. Prosecution of action involving county law enforcement personnel brought against executor or administrator. Any action for default or misconduct of any sheriff, his undersheriff, his detention center staff, or any of his deputies may be prosecuted against the executors or administrators of such sheriff.

History: En. Sec. 4384, Pol. C. 1895; re-en. Sec. 3013, Rev. C. 1907; re-en. Sec. 4777, R.C.M. 1921; re-en. Sec. 4777, R.C.M. 1935; R.C.M. 1947, 16-2705; amd. Sec. 11, Ch. 461, L. 1989.

Cross-References

Certain claims to be brought against personal representative, 72-3-612.

7-32-2128. False claims by sheriff. Every sheriff who falsely represents to the board of county commissioners or attorney general his actual traveling expenses in the performance of any official duty or causes to be paid to him from the state or any county treasury a sum exceeding his actual expenses in the performance of his duty is guilty of a misdemeanor.

History: En. Sec. 4627, Pol. C. 1895; re-en. Sec. 3160, Rev. C. 1907; re-en. Sec. 4909, R.C.M. 1921; re-en. Sec. 4909, R.C.M. 1935; amd. Sec. 18, Ch. 513, L. 1973; amd. Sec. 99, Ch. 326, L. 1974; R.C.M. 1947, 25-225; amd. Sec. 1, Ch. 446, L. 1979; amd. Sec. 12, Ch. 461, L. 1989; 7-32-2128(1), MCA 1987 redes. 7-32-2249 by Code Commissioner, 1989.

Cross-References

Confinement of prisoners, 7-32-2205.

False claims by detention center administrator, 7-32-2249.

Classification of offenses, 45-1-201.

Misdemeanor defined, 45-2-101.

Misdemeanor — no penalty specified, 46-18-212.

7-32-2129. Misconduct of undersheriff. Any default, misfeasance, or malfeasance of such undersheriff acting as sheriff pursuant to 7-32-2122, as well as before, is a breach of the condition of the bond given by the sheriff who appointed him and also a breach of the condition of the bond given by him to the sheriff.

History: En. Sec. 4383, Pol. C. 1895; re-en. Sec. 3012, Rev. C. 1907; re-en. Sec. 4776, R.C.M. 1921; re-en. Sec. 4776, R.C.M. 1935; R.C.M. 1947, 16-2704(part).

Cross-References

Suretyship, Title 28, ch. 11, part 4.

7-32-2130. Liability for refusing to pay over money. If on demand the sheriff neglects or refuses to pay over to the person entitled thereto any money which may come into his hands by virtue of his office (after deducting his legal fees), the amount thereof, with 25% damages and interest at the rate of 10% per month from the time of demand, may be recovered by such person.

History: En. Sec. 4389, Pol. C. 1895; re-en. Sec. 3018, Rev. C. 1907; re-en. Sec. 4782, R.C.M. 1921; Cal. Pol. C. Sec. 4181; re-en. Sec. 4782, R.C.M. 1935; R.C.M. 1947, 16-2710.

Cross-References

Breach of obligation to pay money, 27-1-312.

Liability, Title 27, ch. 1, part 7.

7-32-2131. Liability in civil actions. (1) If the sheriff does not return a notice or process in his possession with the necessary endorsement thereon without delay, he is liable to the party aggrieved for $200 and for all damages sustained by him.

(2) If the sheriff to whom a writ of execution or attachment is delivered neglects or refuses, after being required by the creditor or his attorney, to levy upon or sell any property of the party charged in the writ which is liable to be levied upon or sold, he is liable to the creditor for the value of such property.

(3) No direction or authority by a party or his attorney to a sheriff in respect to the execution of process or return thereof or any act or omission relating thereto is available to discharge or excuse the sheriff from a liability for neglect or misconduct unless it is contained in a writing signed by the attorney of the party or by the party.

(4) "Process", as used in this part, includes all writs, warrants, summons, and orders of courts of justice or judicial officers. "Notice" includes all papers and orders (except process) required to be served in any proceeding before any

court, board, or officer or required by law to be served independently of such proceeding.

History: **(1)En. Sec. 4387, Pol. C. 1895; re-en. Sec. 3016, Rev. C. 1907; re-en. Sec. 4780, R.C.M. 1921; Cal. Pol. C. Sec. 4179; re-en. Sec. 4780, R.C.M. 1935; Sec. 16-2708, R.C.M. 1947; (2)En. Sec. 4388, Pol. C. 1895; re-en. Sec. 3017, Rev. C. 1907; re-en. Sec. 4781, R.C.M. 1921; Cal. Pol. C. Sec. 4180; re-en. Sec. 4781, R.C.M. 1935; Sec. 16-2709, R.C.M. 1947; (3)En. Sec. 4393, Pol. C. 1895; re-en. Sec. 3022, Rev. C. 1907; re-en. Sec. 4786, R.C.M. 1921; Cal. Pol. C. Sec. 4185; re-en. Sec. 4786, R.C.M. 1935; amd. Sec. 1, Ch. 426, L. 1977; Sec. 16-2714, R.C.M. 1947; (4)En. Sec. 4380, Pol. C. 1895; re-en. Sec. 3009, Rev. C. 1907; re-en. Sec. 4773, R.C.M. 1921; Cal. Pol. C. Sec. 4175; re-en. Sec. 4773, R.C.M. 1935; Sec. 16-2701, R.C.M. 1947; R.C.M. 1947, 16-2701, 16-2708, 16-2709, 16-2714(part).**

Cross-References

Sheriff's return prima facie evidence, 25-3-302.

Damages, Title 27, ch. 1, part 2.

Liability, Title 27, ch. 1, part 7.

7-32-2132. Renumbered 7-32-2250 by Code Commissioner, 1989.

7-32-2133 through 7-32-2140 reserved.

7-32-2141. Fees of sheriff. (1) For the services provided in subsections (1)(a) through (1)(n), the sheriff shall receive the fees, if any, set by the county governing body. If fees have not been set by the county governing body, the sheriff shall receive the following:

(a) for the service of summons and complaint on each defendant, $5;

(b) for making a return of a summons for a person not found in the county, in addition to actual mileage traveled, $5;

(c) for levying and serving each writ of attachment of execution on real or personal property, $5;

(d) for service of attachment on the body or order of arrest on each defendant, $5;

(e) for the service of affidavit, order, and undertaking in claim and delivery, $5;

(f) for serving a subpoena, $2.50 for each witness summoned;

(g) for serving a writ of possession or restitution, $5;

(h) for trial of the right of property or damages, including all services except mileage, $7;

(i) for taking bond or undertaking in any case authorized by law, $5;

(j) for serving every notice, rule, or order, $5 for each person served;

(k) for a copy of any writ, process, or other paper when demanded or required by law, 25 cents for each page;

(l) for posting notices and advertising any property for sale on execution or under any judgment or order of sale, exclusive of cost of publication, $5;

(m) for holding any sheriff's sale for personal or real property on execution or under any judgment or order of sale, $7.50;

(n) for cancellation or postponement of sheriff's sale, $5.

(2) All fees collected by the sheriff for the services provided in subsection (1) must be paid to the county treasurer as provided in 7-4-2511(1), and the fees must be deposited by the county treasurer in the general fund of the county unless the county has instituted a public safety levy, in which case the fees must be deposited in the account established pursuant to 7-6-2513.

History: **En. Sec. 4634, Pol. C. 1895; re-en. Sec. 3167, Rev. C. 1907; amd. Sec. 1, Ch. 111, L. 1919; re-en. Sec. 4916, R.C.M. 1921; amd. Sec. 1, Ch. 111, L. 1927; amd. Sec. 1, Ch. 89, L. 1929; amd. Sec. 1, Ch. 121, L. 1933; re-en. Sec. 4916, R.C.M. 1935; amd. Sec. 1, Ch.**

139, L. 1937; amd. Sec. 4, Ch. 121, L. 1941; amd. Sec. 2, Ch. 59, L. 1949; amd. Sec. 2, Ch. 82, L. 1957; amd. Sec. 1, Ch. 343, L. 1975; amd. Sec. 8, Ch. 439, L. 1975; R.C.M. 1947, 25-226(1); amd. Sec. 1, Ch. 174, L. 1981; amd. Sec. 2, Ch. 372, L. 1989; amd. Sec. 2, Ch. 390, L. 1995.

Compiler's Comments

1995 Amendment: Chapter 390 in (2), near middle after "be", substituted "deposited" for "credited" and after "treasurer" substituted "in the general fund of the county unless the county has instituted a public safety levy, in which case the fees must be deposited in the account established pursuant to 7-6-2513" for "to the sheriff's budget"; and made minor changes in style. Amendment effective April 12, 1995.

Cross-References

When Sheriff's execution of process justified and required, 25-3-202.

Execution of judgment, Title 25, ch. 13.

Service, Rule 4D, M.R.Civ.P. (see Title 25, ch. 20).

Subpoena service, Rule 45(c), M.R.Civ.P. (see Title 25, ch. 20).

7-32-2142. Fees of the sheriff for holding property. For the expense in taking and keeping possession of and preserving property under attachment, execution, or other process, the sheriff shall receive such sum as the court or judge may order, not to exceed the actual expense incurred. No keeper must receive to exceed $10 per day, and no keeper must be employed without an order of court or be so employed unless the property is of such character as to need the personal attention and supervision of a keeper. No property shall be placed in charge of a keeper if it can be safely and securely stored or where there is no reasonable danger of loss.

History: En. Sec. 4634, Pol. C. 1895; re-en. Sec. 3167, Rev. C. 1907; amd. Sec. 1, Ch. 111, L. 1919; re-en. Sec. 4916, R.C.M. 1921; amd. Sec. 1, Ch. 111, L. 1927; amd. Sec. 1, Ch. 89, L. 1929; amd. Sec. 1, Ch. 121, L. 1933; re-en. Sec. 4916, R.C.M. 1935; amd. Sec. 1, Ch. 139, L. 1937; amd. Sec. 4, Ch. 121, L. 1941; amd. Sec. 2, Ch. 59, L. 1949; amd. Sec. 2, Ch. 82, L. 1957; amd. Sec. 1, Ch. 343, L. 1975; amd. Sec. 8, Ch. 439, L. 1975; R.C.M. 1947, 25-226(2).

Cross-References

Execution of judgment, Title 25, ch. 13.

Bailment, Title 70, ch. 6.

7-32-2143. Mileage and expenses of sheriff in general. (1) Except as provided in 7-32-2144 and 7-32-2145, in addition to the fees specified in 7-32-2141 and 7-32-2142, the sheriff shall receive for each mile actually traveled in serving any writ, process, order, or other paper, including a warrant of arrest, or in conveying a person under arrest before a magistrate or to a detention center only his actual expenses when such travel is made by railroad or airline; and when travel is other than by railroad or airline, he shall receive a mileage allowance as provided in 2-18-503 for each mile actually traveled by him both going and returning and the actual expenses incurred by him in conveying a person under arrest before a magistrate or to a detention center. He shall receive the same mileage and his actual expenses for the person conveyed or transported under order of court within the county, the same to be in full payment for transporting and feeding such persons during such transportation. Whenever more than one person is transported by the sheriff or when one or more papers are served on the same trip made for the transportation of one or more inmates, only one mileage may be charged.

(2) No mileage may be paid by the county to sheriffs whose vehicles are provided and maintained by the county. All mileage paid to sheriffs whose vehicles are provided and maintained by the county shall be paid over to the county treasurer and deposited in the county general fund.

(3) (a) No mileage may be allowed on an attachment, order of arrest, order for delivery of personal property, or any other order, notice, or paper when the same accompanies the summons and the service thereof may be made at the time of the service of the summons, except for the distance actually traveled beyond that required to serve the summons. When two or more papers are served on the same person at the same time or when any paper or papers are served on more than one person on the same trip, only one mileage may be allowed or charged; and in the service of subpoenas, only one mileage may be charged when the persons named therein live in the same place or in the same direction; but mileage may be charged for the longest distance actually traveled. Any writ, order, or other paper for service must be received at any place in the county where a sheriff or a deputy is found, and mileage must be computed only from such place to the place of service. When two or more officers travel in the same automobile in the discharge of any duty, only one mileage may be allowed.

(b) When any sheriff or constable serves more than one process in the same cause, not requiring more than one journey from his office, he shall receive mileage only for the more distant service, and no mileage in any case may be allowed for less than 1 mile actually traveled.

(4) In lieu of charging mileage for the service of items of a civil nature as provided in subsections (1) and (3), a sheriff may charge $1 for the service of each item of a civil nature that requires a return or proof of service.

History: Ap. p. Sec. 4634, Pol. C. 1895; re-en. Sec. 3167, Rev. C. 1907; amd. Sec. 1, Ch. 111, L. 1919; re-en. Sec. 4916, R.C.M. 1921; amd. Sec. 1, Ch. 111, L. 1927; amd. Sec. 1, Ch. 89, L. 1929; amd. Sec. 1, Ch. 121, L. 1933; re-en. Sec. 4916, R.C.M. 1935; amd. Sec. 1, Ch. 139, L. 1937; amd. Sec. 4, Ch. 121, L. 1941; amd. Sec. 2, Ch. 59, L. 1949; amd. Sec. 2, Ch. 82, L. 1957; amd. Sec. 1, Ch. 343, L. 1975; amd. Sec. 8, Ch. 439, L. 1975; Sec. 25-226, R.C.M. 1947; (2)En. Sec. 1, Ch. 114, L. 1969; amd. Sec. 1, Ch. 340, L. 1971; Sec. 16-2724, R.C.M. 1947; Ap. p. Secs. 1, 2, p. 7, L. 1881; re-en. Sec. 76, 1st Div. comp. Stat. 1887; en. Sec. 640, C. Civ. Proc. 1895; re-en. Sec. 640 C. Civ. Proc. 1895; re-en. Sec. 6523, Rev. C. 1907; re-en. Sec. 9120, R.C.M. 1921; re-en. Sec. 9120, R.C.M. 1935; Sec. 93-3016, R.C.M. 1947; (3)(b)En. Sec. 4619, Pol. C. 1895; re-en. Sec. 3152, Rev. C. 1907; re-en. Sec. 4900, R.C.M. 1921; re-en. Sec. 4900, R.C.M. 1935; Sec. 25-216, R.C.M. 1947; R.C.M. 1947, 16-2724(part), 25-216(part), 25-226(part), 93-3016(part); amd. Sec. 6, Ch. 263, L. 1979; amd. Sec. 1, Ch. 215, L. 1985; amd. Sec. 14, Ch. 461, L. 1989.

7-32-2144. Mileage and expenses of sheriff for delivery of prisoners and mentally ill persons. (1) A sheriff delivering prisoners at the state prison or a juvenile correctional facility or mentally ill persons at the Montana state hospital or other mental health facility receives actual expenses necessarily incurred in their transportation. The expenses include the expenses of the sheriff in going to and returning from the institution. The sheriff shall take vouchers for every item of expense. The amount of these expenses, as shown by the vouchers when presented by the sheriff, shall be audited and allowed by the attorney general or by the board of county commissioners, as the case may be, and paid out of the same money and in the same manner as are other expense claims against the state or counties. In determining the actual expense if travel is by a privately owned vehicle, the mileage rate shall be allowed as provided in subsection (2). No other or further compensation may be received by sheriffs for such expenses.

(2) Unless otherwise provided, while in the discharge of his duties, both civil and criminal, the sheriff receives a mileage allowance as provided in

2-18-503. The sheriff shall also be reimbursed for actual and necessarily incurred expenses for transporting, lodging, and feeding persons ordered by the court as provided in 2-18-501 through 2-18-503. The county is not liable for and the board of county commissioners may not pay for any claim of the sheriff or other officer for any other expenses incurred in travel or for subsistence in cases where mileage is allowed under this section, the fees for mileage named in this section being in full for all such traveling expenses in both civil and criminal work.

History: Ap. p. Sec. 1, Ch. 86, L. 1905; re-en. Sec. 3137, Rev. C. 1907; re-en. Sec. 4885, R.C.M. 1921; re-en. Sec. 4885, R.C.M. 1935; amd. Sec. 3, Ch. 121, L. 1941; amd. Sec. 1, Ch. 59, L. 1949; amd. Sec. 1, Ch. 82, L. 1957; amd. Sec. 85, Ch. 199, L. 1965; amd. Sec. 1, Ch. 455, L. 1973; amd. Sec. 98, Ch. 326, L. 1974; amd. Sec. 7, Ch. 439, L. 1975; Sec. 16-2723, R.C.M. 1947; Ap. p. Sec. 4634, Pol. C. 1895; re-en. Sec. 3167, Rev. C. 1907; amd. Sec. 1, Ch. 111, L. 1919; re-en. Sec. 4916, R.C.M. 1921; amd. Sec. 1, Ch. 111, L. 1927; amd. Sec. 1, Ch. 89, L. 1929; amd. Sec. 1, Ch. 121, L. 1933; re-en. Sec. 4916, R.C.M. 1935; amd. Sec. 1, Ch. 139, L. 1937; amd. Sec. 4, Ch. 121, L. 1941; amd. Sec. 2, Ch. 59, L. 1949; amd. Sec. 2, Ch. 82, L. 1957; amd. Sec. 1, Ch. 343, L. 1975; amd. Sec. 8, Ch. 439, L. 1975; Sec. 26-226, R.C.M. 1947; R.C.M. 1947, 16-2723, 26-226(part); amd. Sec. 7, Ch. 263, L. 1979; amd. Sec. 2, Ch. 446, L. 1979; amd. Sec. 1, Ch. 361, L. 1983.

7-32-2145. Mileage and expenses of sheriff for return of fugitives. For trips made for the return of fugitives apprehended and arrested outside the county, the sheriff shall receive the actual necessary expenses incurred in going for and returning with such fugitive. In determining the actual expense if travel is by a privately owned vehicle, the mileage rate shall be allowed as provided in 7-32-2143.

History: En. Sec. 4634, Pol. C. 1895; re-en. Sec. 3167, Rev. C. 1907; amd. Sec. 1, Ch. 111, L. 1919; re-en. Sec. 4916, R.C.M. 1921; amd. Sec. 1, Ch. 111, L. 1927; amd. Sec. 1, Ch. 89, L. 1929; amd. Sec. 1, Ch. 121, L. 1933; re-en. Sec. 4916, R.C.M. 1935; amd. Sec. 1, Ch. 139, L. 1937; amd. Sec. 4, Ch. 121, L. 1941; amd. Sec. 2, Ch. 59, L. 1949; amd. Sec. 2, Ch. 82, L. 1957; amd. Sec. 1, Ch. 343, L. 1975; amd. Sec. 8, Ch. 439, L. 1975; R.C.M. 1947, 25-226(part).

Part 22
Detention Centers

Part Cross-References

Detention center defined, 7-32-2241.

7-32-2201. Establishing detention center — detention center contract — regional detention center. For the confinement of lawfully committed persons, the governing body of a county may participate in or undertake one or more of the following:

(1) A detention center may be built or provided and kept in good repair at the expense of the county in each county, except that whenever in the discretion of the governing body of two or more local governments it is necessary or desirable to build, provide, or utilize a multijurisdictional detention center, they may do so in any of the jurisdictions concerned. The multijurisdictional detention center shall be built or provided and kept in good repair at the expense of the local governments concerned on a basis as the governing bodies agree.

(2) A county or two or more local governments acting together may provide for the detention center allowed by subsection (1) by:

(a) establishing in the county government the position of detention center administrator and hiring a person, who is answerable to the governing body of the county, to fill the position or appointing the sheriff as detention center administrator; or

(b) entering into an agreement with a private party under which the private party will provide, maintain, or operate the detention center.

(3) The detention centers in this state are kept by the detention center administrators of the local governments in which they are situated. In the case of a multijurisdictional detention center as provided in subsection (1), the detention center shall be kept by the local governments utilizing the detention center on a basis as the governing bodies agree.

(4) The board of county commissioners has jurisdiction and power, under such limitations and restrictions as are prescribed by law, to cause a detention center to be erected, furnished, maintained, and operated. The costs must be paid for out of the county treasury.

History: (1)En. 16-2802.1 by Sec. 1, Ch. 193, L. 1973; Sec. 16-2802.1, R.C.M. 1947; (2)En. Sec. 3022, Pen. C. 1895; re-en. Sec. 9759, Rev. C. 1907; re-en. Sec. 12468, R.C.M. 1921; Cal. Pen. C. Sec. 1597; re-en. Sec. 12468, R.C.M. 1935; amd. Sec. 2, Ch. 193, L. 1973; Sec. 16-2803, R.C.M 1947; (3)En. Subd. 9, Sec. 1, Ch. 100, L. 1931; re-en. Sec. 4465.8, R.C.M. 1935; amd. Sec. 1, Ch. 56, L. 1947; amd. Secs. 1, 2, Ch. 238, L. 1947; amd. Secs. 1, 2, Ch. 5, L. 1949; amd. Sec. 1, Ch. 76, L. 1957; amd. Sec. 1, Ch. 150, L. 1959; amd. Sec. 1, Ch. 130, L. 1973; Sec. 16-1008A, R.C.M. 1947; R.C.M. 1947, 16-1008A(part), 16-2802.1, 16-2803(part); amd. Sec. 10, Ch. 447, L. 1985; amd. Sec. 15, Ch. 461, L. 1989.

Cross-References

General authority of County Commissioners, 7-5-2101.

Interlocal agreements, Title 7, ch. 11, part 1.

Use of detention center — payment of costs, 7-32-2242.

7-32-2202. Use of detention center in contiguous county. (1) When there is no detention center in the county or when the detention center becomes unfit or unsafe for the confinement of inmates, the district judge may, by written appointment filed with the clerk, designate the detention center of a contiguous county for the confinement of the inmates of his county and may at any time modify or annul the appointment.

(2) A copy of the appointment, certified by the clerk, must be served on the detention center administrator of each county involved, who must receive into his detention center all inmates authorized to be confined therein pursuant to this section and who is responsible for the safekeeping of the persons so committed in the same manner and to the same extent as if he were the detention center administrator of the county for whose use his detention center is designated. With respect to the persons so committed, he is deemed the detention center administrator of the county from which they were removed.

(3) When a detention center is erected in the county for the use of which the designation was made or its detention center is rendered fit and safe for the confinement of inmates, the district judge of that county must, by a written revocation filed with the clerk, declare that the necessity for the designation has ceased and that it is revoked.

(4) The clerk must immediately serve a copy of the revocation upon the detention center administrator of each county involved. The detention center administrator in the designated county must thereupon remove the inmates to the detention center from which the removal was had.

History: En. Secs. 3028, 3029, 3030, 3031, Pen. C. 1895; re-en. Secs. 9765, 9766, 9767, 9768, Rev. C. 1907; re-en. Secs. 12474, 12475, 12476, 12477, R.C.M. 1921; Cal. Pen. C. Secs. 1603, 1604, 1605, 1606; re-en. Secs. 12474, 12475, 12476, 12477, R.C.M. 1935; R.C.M. 1947, 16-2810, 16-2811, 16-2812, 16-2813; amd. Sec. 11, Ch. 447, L. 1985; amd. Sec. 16, Ch. 461, L. 1989.

Cross-References

District Judge — expenses when not in county of residence, 3-5-215.

7-32-2203. Who may be confined in a detention center. Detention centers are used as follows:

(1) for the detention of persons committed in order to secure their attendance as witnesses in criminal cases;

(2) for the detention of persons charged with crime and committed for trial;

(3) for the confinement of persons committed for contempt or upon civil process or by other authority of law;

(4) for the confinement of persons sentenced to imprisonment therein upon conviction of a crime;

(5) for the confinement of persons sentenced to the state prison, as agreed upon by the state and the administrator in charge of the detention center.

History: En. Sec. 3022, Pen. C. 1895; re-en. Sec. 9759, Rev. C. 1907; re-en. Sec. 12468, R.C.M. 1921; Cal. Pen. C. Sec. 1597; re-en. Sec. 12468, R.C.M. 1935; amd. Sec. 2, Ch. 193, L. 1973; R.C.M. 1947, 16-2803(part); amd. Sec. 17, Ch. 461, L. 1989.

Cross-References

Commitment of defendant, 46-19-101.

Location and function of prison, 53-30-101.

Contracts for confinement of inmates in other institutions, 53-30-106.

7-32-2204. Maintenance of detention center. The county commissioners, or the private party when provided in an agreement entered into under 7-32-2201(2), have the duty of building, operating, inspecting, and repairing the detention center and must take all necessary precautions against escape, sickness, or infection.

History: En. Sec. 3040, Pen. C. 1895; re-en. Sec. 9777, Rev. C. 1907; re-en. Sec. 12486, R.C.M. 1921; re-en. Sec. 12486, R.C.M. 1935; R.C.M. 1947, 16-2822; amd. Sec. 12, Ch. 447, L. 1985; amd. Sec. 18, Ch. 461, L. 1989.

Cross-References

General authority of County Commissioners, 7-5-2101.

7-32-2205. Confinement of inmates. The detention center administrator shall receive all persons committed to the detention center by competent authority and provide them with necessary food, clothing, and bedding.

History: En. Sec. 3036, Pen. C. 1895; re-en. Sec. 9773, Rev. C. 1907; re-en. Sec. 12482, R.C.M. 1921; Cal. Pen. C. Sec. 1611; re-en. Sec. 12482, R.C.M. 1935; amd. Sec. 1, Ch. 179, L. 1965; amd. Sec. 1, Ch. 203, L. 1967; amd. Sec. 2, Ch. 420, L. 1971; amd. Sec. 1, Ch. 435, L. 1973; R.C.M. 1947, 16-2818(part); amd. Sec. 13, Ch. 447, L. 1985; amd. Sec. 19, Ch. 461, L. 1989.

Cross-References

False claims by detention center administrator, 7-32-2249.

7-32-2206. Repealed. Sec. 31, Ch. 461, L. 1989.

History: (1)En. Sec. 1, Ch. 120, L. 1923; re-en. Sec. 12472.1, R.C.M. 1935; Sec. 16-2807, R.C.M. 1947; (2)En. Sec. 2, Ch. 120, L. 1923; amd. Sec. 1, Ch. 34, L. 1931; re-en. Sec. 12472.2, R.C.M. 1935; amd. Sec. 1, Ch. 253, L. 1969; amd. Sec. 1, Ch. 420, L. 1971;

Sec. 16-2808, R.C.M. 1947; (3)En. Sec. 3027, Pen. C. 1895; re-en. Sec. 9764, Rev. C. 1907; re-en. Sec. 12473, R.C.M. 1921; Cal. Pen. C. Sec. 1602; re-en. Sec. 12473, R.C.M. 1935; Sec. 16-2809, R.C.M. 1947; R.C.M. 1947, 16-2807, 16-2808, 16-2809; amd. Sec. 1, Ch. 671, L. 1979; amd. Sec. 14, Ch. 447, L. 1985; amd. Sec. 1, Ch. 645, L. 1985.

7-32-2207. Confinement of persons on civil process. (1) Whenever a person is committed upon process in a civil action or proceeding, except when the state is a party thereto, the detention center administrator is not bound to receive such person unless security is given on the part of the party at whose instance the process is issued, by a deposit of money, to meet the expenses for him of necessary food, clothing, and bedding or to detain such person any longer than these expenses are provided for.

(2) This section does not apply to cases where a party is committed as a punishment for disobedience to the mandates, process, writs, or orders of court.

History: En. Sec. 3037, Pen. C. 1895; re-en. Sec. 9774, Rev. C. 1907; re-en. Sec. 12483, R.C.M. 1921; Cal. Pen. C. Sec. 1612; re-en. Sec. 12483, R.C.M. 1935; R.C.M. 1947, 16-2819; amd. Sec. 15, Ch. 447, L. 1985; amd. Sec. 20, Ch. 461, L. 1989.

7-32-2208. Actual confinement of inmates required. An inmate committed to a detention center for trial or examination or, except as provided in 7-32-2225 through 7-32-2227, a prisoner convicted must be actually confined in the detention center until he is legally discharged.

History: En. Sec. 3025, Pen. C. 1895; re-en. Sec. 9762, Rev. C. 1907; re-en. Sec. 12471, R.C.M. 1921; Cal. Pen. C. Sec. 1600; re-en. Sec. 12471, R.C.M. 1935; R.C.M. 1947, 16-2806; amd. Sec. 4, Ch. 361, L. 1989; amd. Sec. 21, Ch. 461, L. 1989.

Cross-References

Liability for escape in civil actions, 7-32-2250.

7-32-2209. Repealed. Sec. 31, Ch. 461, L. 1989.

History: En. Sec. 3036, Pen. C. 1895; re-en. Sec. 9773, Rev. C. 1907; re-en. Sec. 12482, R.C.M. 1921; Cal. Pen. C. Sec. 1611; re-en. Sec. 12482, R.C.M. 1935; amd. Sec. 1, Ch. 179, L. 1965; amd. Sec. 1, Ch. 203, L. 1967; amd. Sec. 2, Ch. 420, L. 1971; amd. Sec. 1, Ch. 435, L. 1973; R.C.M. 1947, 16-2818(part); amd. Sec. 2, Ch. 671, L. 1979; amd. Sec. 16, Ch. 447, L. 1985; amd. Sec. 2, Ch. 645, L. 1985.

7-32-2210. Repealed. Sec. 31, Ch. 461, L. 1989.

History: En. Sec. 3035, Pen. C. 1895; re-en. Sec. 9772, Rev. C. 1907; re-en. Sec. 12481, R.C.M. 1921; Cal. Pen. C. Sec. 1610; re-en. Sec. 12481, R.C.M. 1935; R.C.M. 1947, 16-2817.

7-32-2211. Service of papers upon detention center administrator for prisoner. A detention center administrator upon whom a paper in a judicial proceeding, directed to an inmate in his custody, is served must forthwith deliver it to the inmate.

History: En. Sec. 3034, Pen. C. 1895; re-en. Sec. 9771, Rev. C. 1907; re-en. Sec. 12480, R.C.M. 1921; Cal. Pen. C. Sec. 1609; re-en. Sec. 12480, R.C.M. 1935; R.C.M. 1947, 16-2816; amd. Sec. 22, Ch. 461, L. 1989.

Cross-References

Sheriff — liability in civil actions, 7-32-2131.

Service, Rule 4D, M.R.Civ.P. (see Title 25, ch. 20).

7-32-2212. Repealed. Sec. 31, Ch. 461, L. 1989.

History: En. Sec. 3041, Pen. C. 1895; re-en. Sec. 9778, Rev. C. 1907; re-en. Sec. 12487, R.C.M. 1921; re-en. Sec. 12487, R.C.M. 1935; R.C.M. 1947, 16-2823; amd. Sec. 17, Ch. 447, L. 1985.

7-32-2213. Repealed. Sec. 31, Ch. 461, L. 1989.

History: **En. Sec. 1, Ch. 93, L. 1909; re-en. Sec. 3070, R.C.M. 1921; re-en. Sec. 3070, R.C.M. 1935; R.C.M. 1947, 41-1106.**

7-32-2214 through 7-32-2220 reserved.

7-32-2221. Repealed. Sec. 31, Ch. 461, L. 1989.

History: **En. Secs. 3023, 3024, Pen. C. 1895; re-en. Secs. 9760, 9761, Rev. C. 1907; re-en. Secs. 12469, 12470, R.C.M. 1921; Cal. Pen. C. Secs. 1598, 1599; re-en. Secs. 12469, 12470, R.C.M. 1935; R.C.M. 1947, 16-2804, 16-2805; amd. Sec. 1, Ch. 82, L. 1983; amd. Sec. 18, Ch. 447, L. 1985; amd. Sec. 12, Ch. 475, L. 1987; amd. Sec. 1, Ch. 434, L. 1989.**

7-32-2222. Health and safety of prisoners. (1) Each detention center shall comply with state and local fire codes for correctional occupancy and with sanitation, safety, and health codes.

(2) Designated exits must permit prompt evacuation of inmates and detention center staff in an emergency.

(3) When there is good reason to believe that the inmates may be injured or endangered, the detention center administrator shall remove them to a safe and convenient place and confine them there as long as necessary to avoid the danger.

(4) (a) If in the opinion of the detention center administrator an inmate under the administrator's jurisdiction requires medication, medical services, or hospitalization, the expense must be borne by the arresting agency when the arresting agency is not the county in which the inmate is confined, except as provided in 7-32-2245 or subsection (4)(b) of this section.

(b) If a city or town commits a person to the detention center of the county in which the city or town is located for a reason other than detention pending trial for or detention for service of a sentence for violating an ordinance of that city or town, the expense must be paid by the county, except as provided in 7-32-2245. If the department of corrections is the arresting agency and the inmate is a probation violator, the expense must be paid by the county in which the district court that retains jurisdiction over the inmate is located, except as provided in 7-32-2245.

(c) The county attorney shall initiate proceedings to collect from the inmate any charges arising from the medical services or hospitalization for the inmate involved in accordance with 7-32-2245.

History: **(1)En. Sec. 3032, Pen. C. 1895; re-en. Sec. 9769, Rev. C. 1907; re-en. Sec. 12478, R.C.M. 1921; Cal. Pen. C. Sec. 1607; re-en. Sec. 12478, R.C.M. 1935; Sec. 16-2814, R.C.M. 1947; (2)En. Sec. 3033, Pen. C. 1895; re-en. Sec. 9770, Rev. C. 1907; re-en. Sec. 12479, R.C.M. 1921; Cal. Pen. C. Sec. 1608; re-en. Sec. 12479, R.C.M. 1935; Sec. 16-2815, R.C.M. 1947; (3)En. Sec. 3036, Pen. C. 1895; re-en. Sec. 9773, Rev. C. 1907; re-en. Sec. 12482, R.C.M. 1921; Cal. Pen. C. Sec. 1611; re-en. Sec. 12482, R.C.M. 1935; amd. Sec. 1, Ch. 179, L. 1965; amd. Sec. 1, Ch. 203, L. 1967; amd. Sec. 2, Ch. 420, L. 1971; amd. Sec. 1, Ch. 435, L. 1973; Sec. 16-2818, R.C.M. 1947; R.C.M. 1947, 16-2814, 16-2815, 16-2818(part); amd. Sec. 19, Ch. 447, L. 1985; amd. Sec. 23, Ch. 461, L. 1989; amd. Sec. 1, Ch. 262, L. 1991; amd. Sec. 1, Ch. 768, L. 1991; amd. Sec. 1, Ch. 388, L. 1995; amd. Sec. 31, Ch. 546, L. 1995.**

Compiler's Comments

1995 Amendments: Chapter 388 in (4)(a), near end before "subsection", inserted "7-32-2245"; at end of first and second sentences in (4)(b) inserted exception clause; at end of (4)(c) substituted "in accordance with 7-32-2245" for "if he determines the inmate is financially able to pay"; and made minor changes in style. Amendment effective April 12, 1995.

Chapter 546 in (4)(b), in second sentence, substituted "department of corrections" for "department of corrections and human services"; and made minor changes in style. Amendment effective July 1, 1995.

Cross-References

Powers of Judges at chambers, 3-5-311.

County Attorney — actions to recover money, 7-4-2713.

Sanitary inspections, 50-1-203.

7-32-2223. Repealed. Sec. 31, Ch. 461, L. 1989.

History: En. Secs. 3038, 3039, Pen. C. 1895; re-en. Secs. 9775, 9776, Rev. C. 1907; re-en. Secs. 12484, 12485, R.C.M. 1921; Cal. Pen. C. Secs. 1613, 1614; re-en. Secs. 12484, 12485, R.C.M. 1935; R.C.M. 1947, 16-2820, 16-2821.

7-32-2224 reserved.

7-32-2225. County jail work program. (1) A county may operate a county jail work program. The program may be established to allow jail inmates convicted of nonviolent offenses to serve a sentence of imprisonment in the county jail by performing county work without actual physical confinement in the county jail.

(2) A participant in a county jail work program is considered to be in confinement for the purposes of laws relating to confinement in jail, sentencing, and length of imprisonment.

(3) A county jail work program may be established in addition to any county jail labor, rehabilitation, or other program, including the authority of the board of county commissioners to require persons confined to the county jail to perform labor.

History: En. Sec. 1, Ch. 361, L. 1989.

Cross-References

Rights of convicted, Art. II, sec. 28, Mont. Const.

Jail work release program, Title 46, ch. 18, part 7.

Supervised release program, Title 46, ch. 23, part 4.

7-32-2226. Operation of county jail work program. (1) If a county establishes a county jail work program, it must be authorized by the board of county commissioners and supervised by the county sheriff. The sheriff may permit persons eligible under the provisions of 7-32-2227 to work on county projects or for county departments as designated by the board of county commissioners. A person participating in a county jail work program may not:

(a) have his labor or other work contracted out to a private party;

(b) be required to do labor or other work that furthers the private interests of a government employee or official;

(c) be permitted or required to do labor or other work that relates to anything other than public projects, public services, or other public matters;

(d) be used to displace any regular county employee;

(e) perform the duties of any vacant county position; or

(f) work on any construction or reconstruction project.

(2) No county may reduce its current workforce in order to transfer the duties of such a reduction to persons participating in a county jail work program.

(3) A person participating in a county work program may not be physically confined in the county jail during the course of his participation. The person may not be required to perform county work in excess of 8 hours each calendar day. Each calendar day in which a person has participated in a county jail work program is 1 day of incarceration for the purposes of serving a sentence of imprisonment.

(4) The sheriff, in conjunction with the board of county commissioners, shall establish a written policy on how jail inmates may volunteer for participation in the county work program and what criteria the sheriff shall use to choose volunteers if there are more eligible persons volunteering than are needed in the program.

(5) In order to ensure public safety, the sheriff may in his discretion deny a person permission to participate in the program and may revoke a person's permission to participate at any time.

(6) A person participating in a program is under official detention as that term is used in defining the crime of escape in 45-7-306. Failure to appear for work at a time and place scheduled for participation in a program constitutes the offense of escape.

History: **En. Sec. 2, Ch. 361, L. 1989.**

Cross-References

Rights of convicted, Art. II, sec. 28, Mont. Const.

Jail work release program, Title 46, ch. 18, part 7.

Supervised release program, Title 46, ch. 23, part 4.

7-32-2227. Inmate eligibility for participation. A person may be permitted to participate in a county jail work program if the person:

(1) has been sentenced to the county jail for an offense and is not confined in the county jail upon process in a civil action or prior to examination or trial;

(2) is not serving a sentence for homicide, robbery, sexual intercourse without consent, arson, burglary, kidnapping, escape, assault, partner or family member assault, incest, or any other offense in which violence is an element of the crime or for an offense during the course of which bodily injury occurred;

(3) was not prohibited from participating in the county work program by the sentencing judge, magistrate, or justice of the peace or by the judge's, magistrate's, or justice's successor; and

(4) has applied to participate to the county sheriff and the sheriff, pursuant to written policy, has approved the participation.

History: **En. Sec. 3, Ch. 361, L. 1989; amd. Sec. 2, Ch. 350, L. 1995.**

Compiler's Comments

1995 Amendment: Chapter 350 in (2), near middle, substituted "partner or family member assault" for "domestic abuse"; and made minor changes in style.

Cross-References

Rights of convicted, Art. II, sec. 28, Mont. Const.

Jail work release program, Title 46, ch. 18, part 7.

Supervised release program, Title 46, ch. 23, part 4.

7-32-2228 through 7-32-2230 reserved.

7-32-2231. Purpose to allow private industry involvement. It is the purpose of 7-32-2231 through 7-32-2234 to allow multijurisdictional or single-jurisdiction detention centers to be built by private industry and leased to the participating local government or governments for operation by the local government, collectively by participating local governments, or by a private entity with the concurrence of the local governments involved.

History: **En. Sec. 1, Ch. 447, L. 1985; amd. Sec. 24, Ch. 461, L. 1989.**

7-32-2232. Detention centers — contracts with private parties. (1) The term of an agreement under 7-32-2201 with a private party may not exceed 3 years.

(2) The agreement must include:

(a) detailed standards for the operation of the detention center and the incarceration of inmates;

(b) a performance bond from the private party acceptable to the local government;

(c) a promise from the private party to indemnify the local government for any damages for which the local government is found liable as a result of the operation of the detention center;

(d) a provision that the private party must purchase liability insurance in an amount acceptable to the local government;

(e) minimum standards for the training of detention center staff and a provision that the private party will ensure such training; and

(f) a provision that the local government may immediately terminate the contract for good cause.

(3) The provisions of Title 7 relating to bids for local government contracts and purchases do not apply to a contract entered into under 7-32-2201 and this section.

History: En. Sec. 2, Ch. 447, L. 1985; amd. Secs. 25, 30, Ch. 461, L. 1989.

7-32-2233. Requests for contract proposals. (1) A local government seeking to enter into a contract under 7-32-2201 and 7-32-2232 may publish a request for proposals. The request for proposals must be published in a newspaper of general circulation in the county once a week for 3 successive weeks and must include information concerning the type of detention center services required.

(2) Requests for proposals must be sent to persons who have previously requested that their names be placed on a list of persons providing detention center services. The Montana board of crime control shall maintain a list of persons providing detention center services and furnish the list to a local government upon request.

(3) In selecting a proposal and awarding a contract, a local government need not accept the proposal with the lowest cost.

(4) The local government must base its selection on demonstrated competence, knowledge and qualifications, the reasonableness of the services proposed, and the reasonableness of the proposed contract price for the detention center services.

(5) A copy of all proposals must be kept available for public inspection in the office of the county clerk and recorder.

(6) The local government must give specific reasons for its selection of a proposal. The reasons must be recorded in the minutes of the governing body of the local government.

History: En. Sec. 3, Ch. 447, L. 1985; amd. Sec. 26, Ch. 461, L. 1989.

7-32-2234. Powers of detention center administrators. A detention center administrator is responsible for the immediate management and control of the detention center subject to general policies and programs established pursuant to the agreement provided for in 7-32-2201(2) and any applicable interlocal agreement. The powers of such an administrator and detention center personnel employed under his authority include control over inmates:

(1) within the confines and grounds of the detention center; and

(2) outside the detention center confines and grounds while transporting any inmate or in the hot pursuit or apprehension of any escapee.

History: **En. Sec. 4, Ch. 447, L. 1985; amd. Sec. 27, Ch. 461, L. 1989.**

7-32-2235 through 7-32-2240 reserved.

7-32-2241. Definitions. As used in this part, the following definitions apply:

(1) "Detention center" means a facility established and maintained by an appropriate entity for the purpose of confining arrested persons or persons sentenced to the detention center.

(2) "Detention center administrator" means the sheriff, chief of police, administrator, superintendent, director, or other individual serving as the chief executive officer of a detention center.

(3) "Detention center staff" means custodial personnel whose duties include ongoing supervision of the inmates in a detention center.

(4) "Inmate" means a person who is confined in a detention center.

(5) "Local government" means a city, town, county, or consolidated city-county government.

(6) "Multijurisdictional detention center" means a detention center established and maintained by two or more local governments for the confinement of persons arrested or sentenced to confinement or a local government detention center contracting to confine persons arrested or sentenced in other local governments.

(7) "Private detention center" means a detention center owned by private industry and leased to or operated under a contract with a local government.

History: **En. Sec. 1, Ch. 461, L. 1989.**

7-32-2242. Use of detention center — payment of costs. (1) Local government, state, and federal law enforcement and correctional agencies may use any detention center for the confinement of arrested persons and the punishment of offenders, under conditions imposed by law and with the consent of the governing body responsible for the detention center.

(2) (a) If a person is confined in a detention center by an arresting agency not responsible for the operation of the detention center, the costs of holding the person in confinement must be paid by the arresting agency at a rate that is agreed upon by the arresting agency and the detention center and that covers the reasonable costs of confinement, excluding capital construction costs, except as provided in 7-32-2245 or subsection (2)(b) of this section.

(b) If a city or town commits a person to the detention center of the county in which the city or town is located for a reason other than detention pending trial for or detention for service of a sentence for violating an ordinance of that city or town, the costs must be paid by the county, except as provided in 7-32-2245. If the department of corrections is the arresting agency and the inmate is a probation violator, the costs must be paid by the county in which the district court that retains jurisdiction over the inmate is located, except as provided in 7-32-2245.

(c) Payments must be made to the government unit responsible for the detention center or to the administrator operating a private detention center under an agreement provided for in 7-32-2201, upon presentation of a claim to the arresting agency.

(3) If a person is a fugitive from justice from an out-of-state jurisdiction, the costs, including medical expenses, of holding the person in a detention center pending extradition must be paid by the out-of-state jurisdiction.

History: En. Sec. 2, Ch. 461, L. 1989; amd. Sec. 1, Ch. 262, L. 1991; amd. Sec. 2, Ch. 768, L. 1991; amd. Sec. 2, Ch. 388, L. 1995; amd. Sec. 32, Ch. 546, L. 1995.

Compiler's Comments

1995 Amendment: Chapter 388 in (2)(a), near end before "subsection", inserted "7-32-2245"; and at end of first and second sentences in (2)(b) inserted exception clause. Amendment effective April 12, 1995.

Chapter 546 in (2)(b), in second sentence, substituted "department of corrections" for "department of corrections and human services". Amendment effective July 1, 1995.

7-32-2243. Contracts for detention center services. (1) Contracts concerning detention center services and facilities between state or local government units, the state of Montana, or the federal government must be made pursuant to the Interlocal Cooperation Act, Title 7, chapter 11, part 1.

(2) A government unit responsible for a detention center may contract with a government unit of another state for the confinement of lawfully committed inmates in a detention center located in either jurisdiction.

History: En. Sec. 3, Ch. 461, L. 1989.

7-32-2244. Detention of juveniles. Juveniles may be held in a detention center only in accordance with 41-5-301 through 41-5-307, 41-5-309, and 41-5-311.

History: En. Sec. 4, Ch. 461, L. 1989; amd. Sec. 10, Ch. 547, L. 1991.

7-32-2245. Payment of costs by inmate. (1) An inmate found by the sentencing court to have the ability to pay is liable for the costs, including actual medical costs, of the inmate's confinement in a detention center. The rate for confinement costs must be determined in accordance with 46-18-403. Confinement costs, other than actual medical costs, must be ordered by the court and must be paid in advance of confinement and prior to payment of any fine.

(2) An inmate is responsible for the actual costs of medication, medical services, or hospitalization while the inmate is detained in a detention center. Inability to pay may not be a factor in providing necessary medical care for an inmate. This section does not restrict an inmate's right to use a third-party payor.

History: En. Sec. 5, Ch. 461, L. 1989; amd. Sec. 3, Ch. 388, L. 1995.

Compiler's Comments

1995 Amendment: Chapter 388 in (1), in first sentence after "costs", inserted "including actual medical costs", in second sentence substituted "The rate for confinement costs must be determined in accordance with 46-18-403" for "The rate at which the inmate must pay the costs must be established at the sentencing hearing", and inserted third sentence concerning payment of court-ordered confinement costs; inserted (2) concerning an inmate's responsibility for medical costs; and made minor changes in style. Amendment effective April 12, 1995.

7-32-2246. Temporary release from detention center. A detention center inmate may be granted, by court order and with the consent of the sheriff, the privilege of leaving the detention center during necessary and reasonable hours for any of the following purposes:

(1) seeking employment;

(2) working at his employment;

(3) conducting his own business or self-employment;

(4) attending to the needs of his family;
(5) attending an educational institution; or
(6) obtaining medical treatment.

History: **En. Sec. 6, Ch. 461, L. 1989.**

7-32-2247. Annoyance of inmate prohibited — penalty. (1) The detention center administrator or staff member in charge of an inmate must use necessary and proper means to protect an inmate from purposeful or knowing insults and annoyance by others and to prevent others from communicating with the inmate while the inmate is at or is going to or returning from employment.

(2) A person persisting in purposefully or knowingly insulting, annoying, or communicating with an inmate after being told by the detention center administrator or staff member to desist commits the offense of inmate annoyance.

(3) A person convicted of the offense of inmate annoyance shall be fined an amount not to exceed $500.

History: **En. Sec. 7, Ch. 461, L. 1989.**

7-32-2248. Inmate endangerment — penalty. (1) A detention center administrator or staff member commits the offense of inmate endangerment if he knowingly:

(a) places or keeps a juvenile with adult inmates;
(b) uses corporal punishment against an inmate; or
(c) uses physical force against an inmate, except as necessary for:
(i) self-defense;
(ii) control of inmates;
(iii) protection of another person from imminent physical attack; or
(iv) prevention of riot or escape.

(2) A person who commits the offense of inmate endangerment shall be fined an amount not to exceed $500.

History: **En. Sec. 8, Ch. 461, L. 1989.**

7-32-2249. False claims by detention center administrator. Every detention center administrator who falsely represents to the governing body of a local government the actual expenses of boarding detention center inmates, furnishing food and supplies, or providing services or who presents to the governing body false items in a claim or false vouchers or, if he is not a private detention center administrator, makes any profit from the keeping of inmates in his custody and every person who gives a false item or false voucher to be used by the detention center administrator in any claim against the local government is guilty of a misdemeanor.

History: **En. Sec. 4628, Pol. C. 1895; re-en. Sec. 3161, Rev. C. 1907; re-en. Sec. 4910, R.C.M. 1921; re-en. Sec. 4910, R.C.M. 1935; amd. Sec. 19, Ch. 513, L. 1973; R.C.M. 1947, 25-229; amd. Sec. 1, Ch. 446, L. 1979; amd. Sec. 12, Ch. 461, L. 1989; Sec. 7-32-2128(1), MCA 1987; redes. 7-32-2249 by Code Commissioner, 1989.**

Cross-References

False claims by Sheriff, 7-32-2128.
Confinement of prisoners, 7-32-2205.
Classification of offenses, 45-1-201.
Misdemeanor defined, 45-2-101.
Misdemeanor — no penalty specified, 46-18-212.

7-32-2250. Liability for escape in civil actions. (1) A detention center administrator who fails to prevent the escape or rescue of a person in his custody arrested in a civil action without the consent or connivance of the party in whose behalf the arrest or imprisonment was made is liable as follows:

(a) When the arrest is upon an order to hold for bail or upon a surrender in exoneration of bail before judgment, the detention center administrator is liable to the plaintiff for the bail.

(b) When the arrest is on an execution or commitment to enforce the payment of money, the detention center administrator is liable for the amount expressed in the execution or commitment.

(c) When the arrest is on an execution or commitment other than to enforce the payment of money, the detention center administrator is liable for the actual damages sustained.

(2) Upon being sued for damages for an escape or rescue of a person in his custody, the detention center administrator may introduce evidence in mitigation or exculpation.

(3) An action may not be maintained against a detention center administrator for a rescue or for an escape of a person arrested upon an execution or commitment if, after his rescue or escape and before the commencement of the action, the inmate returns to the detention center or is retaken by the detention center administrator.

History: En. Secs. 4390, 4391, 4392, Pol. C. 1895; re-en. Secs. 3019, 3020, 3021, Rev. C. 1907; re-en. Secs. 4783, 4784, 4785, R.C.M. 1921; Cal. Pol. C. Secs. 4182, 4183, 4184; re-en. Secs. 4783, 4784, 4785, R.C.M. 1935; R.C.M. 1947, 16-2711, 16-2712, 16-2713; amd. Sec. 5, Ch. 263, L. 1979; amd. Sec. 9, Ch. 447, L. 1985; amd. Sec. 13, Ch. 461, L. 1989; Sec. 7-32-2132, MCA 1987; redes. 7-32-2250 by Code Commissioner, 1989.

Cross-References

Execution of judgment, Title 25, ch. 13.

Arrest and bail in civil actions, Title 27, ch. 16.

Bail, Title 46, ch. 9.

Part 23

Powers of County Commissioners Related to Law Enforcement

Part Cross-References

County Commissioners, Title 7, ch. 4, part 21.

General authority of County Commissioners, 7-5-2101.

7-32-2301. Rewards for apprehension of criminals. (1) The board of county commissioners of each county has the power to offer rewards for the apprehension and conviction of any person or persons who have committed any felony within their respective counties. Said reward shall not exceed the sum of $500 for the apprehension and conviction of the party or parties guilty of a felony, and the reward shall not be paid in any case until a conviction has first been had in said case. All rewards shall be paid by warrants drawn on the general fund of the county.

(2) In no case shall the members of the board, sheriff, or other county officer receiving an annual or monthly salary be entitled to any part of any such reward.

History: En. Sec. 1, Ch. 61, L. 1909; re-en. Sec. 4483, R.C.M. 1921; re-en. Sec. 4483, R.C.M. 1935; R.C.M. 1947, 16-1123.

Cross-References

County officers, Title 7, ch. 4, parts 1, 21 through 30.

Felony defined, 45-2-101.

7-32-2302. Establishment of curfew — penalty. (1) A board of county commissioners may adopt an ordinance that establishes a curfew hour after which minors will not be allowed abroad on the public streets within the confines of unincorporated cities and towns of the county.

(2) The enforcement of the provisions of this section is enjoined upon each officer and official whose duty it is to enforce the laws of the state.

(3) A person convicted of violating a curfew ordinance adopted under subsection (1) shall be punished by a fine not exceeding $75 or by a sentence of up to 10 hours of community service, or both.

History: (1)En. Sec. 1, Ch. 29, L. 1969; Sec. 16-1182, R.C.M. 1947; (2)En. Sec. 2, Ch. 29, L. 1969; Sec. 16-1183, R.C.M. 1947; (3)En. Sec. 3, Ch. 29, L. 1969; Sec. 16-1184, R.C.M. 1947; R.C.M. 16-1182, 16-1183, 16-1184; amd. Sec. 1, Ch. 258, L. 1995.

Compiler's Comments

1995 Amendment: Chapter 258 in (1), at beginning, substituted "may adopt an ordinance that establishes" for "power to establish, by general order and from time to time"; deleted (1)(b) that read: "(b) authority to make all proper and necessary administrative rules for the purpose of carrying into effect the provisions of this section"; in (3) substituted "convicted of violating a curfew ordinance adopted under subsection (1)" for "violating any of the provisions of this section shall be deemed guilty of a misdemeanor and upon conviction thereof", increased fine from $10 to $75, and inserted reference to community service sentence; and made minor changes in style.

Cross-References

General authority of County Commissioners, 7-5-2101.

Classification of offenses, 45-1-201.

Misdemeanor defined, 45-2-101.

Parts 24 through 40 reserved

Part 41

Municipal Police Force

Part Cross-References

Police retirement — statewide plan, Title 19, ch. 9.

Police retirement — local funds, Title 19, ch. 19.

Automatic security alarm system — permission of chief law enforcement officer, 37-60-408.

Restriction on local government regulation of firearms, 45-8-351.

7-32-4101. Police department authorized and required. There shall be in every city and town of this state a police department which shall be organized, managed, and controlled as provided in this part.

History: En. Sec. 1, Ch. 136, L. 1907; Sec. 3304, Rev. C. 1907; re-en. Sec. 5095, R.C.M. 1921; re-en. Sec. 5095, R.C.M. 1935; amd. Sec. 1, Ch. 152, L. 1947; amd. Sec. 1, Ch. 72, L. 1949; R.C.M. 1947, 11-1801(part).

Cross-References

Department of Public Safety authorized, 7-32-101.

7-32-4102. Applicability of part. (1) This part shall in all respects be applicable to and shall govern and control police departments in every such city or town organized under any form of municipal government except where this part is in conflict with the commission form of government provided for in part 42 of chapter 3 and amendments thereto.

(2) Where the provisions of this part do conflict with the provisions of said part 42 and the amendments thereto pertaining to the commission form of government, the provisions pertaining to the commission form of government shall prevail.

History: **En. Sec. 1, Ch. 136, L. 1907; Sec. 3304, Rev. C. 1907; re-en. Sec. 5095, R.C.M. 1921; re-en. Sec. 5095, R.C.M. 1935; amd. Sec. 1, Ch. 152, L. 1947; amd. Sec. 1, Ch. 72, L. 1949; R.C.M. 1947, 11-1801(part).**

7-32-4103. Supervision of police department. In all cities and towns, the mayor, or the manager in those cities operating under the commission-manager plan, shall have charge of and supervision over the police department thereof. He shall appoint all the members and officers thereof. Subject to the provisions of this part, he shall have the power to suspend or remove any member or officer of the force. He shall make rules, not inconsistent with the provisions of this part, the other laws of the state, or the ordinances of the city or town council, for the government, direction, management, and discipline of the police force.

History: **En. Sec. 2, Ch. 136, L. 1907; Sec. 3305, Rev. C. 1907; re-en. Sec. 5096, R.C.M. 1921; re-en. Sec. 5096, R.C.M. 1935; amd. Sec. 2, Ch. 152, L. 1947; R.C.M. 1947, 11-1802.**

Cross-References

Powers of Mayor related to municipal officers, personnel, and citizens, 7-4-4303.

Structure of Department of Public Safety — duties, 7-32-103.

7-32-4104. Additional regulations by city council. In addition to the provisions herein contained, the city or town council may make any ordinances, not inconsistent with this part or any law of the state, for the government of the police department and for regulating the powers and duties of its officers and members.

History: **En. Sec. 11, Ch. 136, L. 1907; Sec. 3314, Rev. C. 1907; re-en. Sec. 5105, R.C.M. 1921; re-en. Sec. 5105, R.C.M. 1935; R.C.M. 1947, 11-1813.**

Cross-References

General powers of Municipal Council, 7-5-4101.

Municipal ordinances, 7-5-4201.

7-32-4105. Duties of chief of police. (1) It is the duty of the chief of police:

(a) to execute and return all process issued by the city judge or directed to him by any legal authority and to attend upon the city court regularly;

(b) to arrest all persons guilty of a breach of the peace or for the violation of any city or town ordinance and bring them before the city judge for trial;

(c) to have charge and control of all policemen, subject to such rules as may be prescribed by ordinance, and to report to the council all delinquencies or neglect of duty or official misconduct of policemen for action of the council;

(d) to perform such other duties as the council may prescribe.

(2) The chief of police has the same powers as a constable in the discharge of his duties, but he must not serve a process in any civil action or proceeding except when a city or town is a party.

History: **En. Sec. 4785, Pol. C. 1895; re-en. Sec. 3254, Rev. C. 1907; re-en. Sec. 5037, R.C.M. 1921; re-en. Sec. 5037, R.C.M. 1935; R.C.M. 1947, 11-810.**

Cross-References

Department of Public Safety — officer's status for purpose of enforcing and executing court orders, 7-32-105.

Duties of Sheriff, 7-32-2121.

Execution of judgment, Title 25, ch. 13.

Arrest, Title 46, ch. 6.

Arraignment of defendant, Title 46, ch. 12.

7-32-4106. List of active and eligible policemen. (1) The city council shall have absolute and exclusive power to determine and limit the number of police officers and members to comprise the police force of any city, to reduce the number of the police force at any time, and to divide the police membership into two lists:

(a) one an active list, who are to be actually employed and receive pay while so employed; and

(b) one an eligible list, who shall not receive pay while not actually employed as an officer or member.

(2) Officers or members of the active list temporarily relieved from duty shall become members of the eligible list without pay and shall be first entitled to reinstatement on the active list in case of vacancy, according to their seniority in the service, and all others on the eligible list shall be entitled to fill a vacancy in the order of their appointment.

(3) Such action of the council shall not be subject to review by any court.

(4) In no event shall there be any officers or members placed on the eligible list, except in case of temporary reduction of the police force, when the number already on the eligible list shall equal in number 20% of the active list.

History: En. Sec. 7, Ch. 136, L. 1907; Sec. 3310, Rev. C. 1907; re-en. Sec. 5101, R.C.M. 1921; amd. Sec. 5, Ch. 119, L. 1923; re-en. Sec. 5101, R.C.M. 1935; R.C.M. 1947, 11-1807.

Cross-References

General powers of Municipal Council, 7-5-4101.

Veterans' public employment preference, Title 39, ch. 29.

Handicapped persons' public employment preference, Title 39, ch. 30.

7-32-4107. Utilization of retired officers. Policemen or officers on the retired list of any city or town of this state shall retire from the active list of police officers of such city or town but shall be subject to call for police service or active duty whenever an emergency shall require or the active list be temporarily insufficient for proper policing of such city or town, all under the rules as the board of police commissioners or city council shall prescribe.

History: En. Sec. 3, Ch. 100, L. 1927; amd. Sec. 3, Ch. 120, L. 1929; re-en. Sec. 5108.3, R.C.M. 1935; amd. Sec. 3, Ch. 489, L. 1977; amd. Sec. 6, Ch. 85, L. 1977; R.C.M. 1947, 11-1819.

Cross-References

Municipal Council rules and discipline, 7-5-4103.

7-32-4108. Appointment to police force. All appointments to the police force must be appointed by the mayor, or the manager in those cities operating under the commission-manager plan, and confirmed by the city council or commission. No such appointment must be made until:

(1) an application for such position on the police force has been filed with the mayor, or the manager in those cities operating under the commission-manager plan, and referred by him to the police commission, where such commission exists; and

(2) such applicant has successfully passed the examination required to be held by such police commission and a certificate from such police commission that the applicant has qualified for such appointment has been filed with the mayor, or the manager in those cities operating under the commission-manager plan.

History: En. Sec. 3, Ch. 136, L. 1907; Sec. 3306, Rev. C. 1907; amd. Sec. 1, Ch. 198, L. 1921; re-en. Sec. 5097, R.C.M. 1921; amd. Sec. 2, Ch. 119, L. 1923; re-en. Sec. 5097, R.C.M. 1935; amd. Sec. 3, Ch. 152, L. 1947; amd. Sec. 1, Ch. 160, L. 1973; R.C.M. 1947, 11-1803(part).

Cross-References

Powers of Mayor related to municipal officers, personnel, and citizens, 7-4-4303.

General powers of Municipal Council, 7-5-4101.

Powers and duties of Mayor related to administration and executive function, 7-5-4102.

7-32-4109. Temporary employment for persons doing police work. The mayor of any city shall have the power and authority, at any time when he deems it expedient, to employ not to exceed two persons at one time for a period not to exceed 30 days to do police duty who are not members of the police department.

History: En. Sec. 6, Ch. 136, L. 1907; Sec. 3309, Rev. C. 1907; re-en. Sec. 5100, R.C.M. 1921; amd. Sec. 4, Ch. 119, L. 1923; re-en. Sec. 5100, R.C.M. 1935; amd. Sec. 1, Ch. 72, L. 1955; amd. Sec. 1, Ch. 28, L. 1959; R.C.M. 1947, 11-1806(part).

Cross-References

Powers of Mayor related to municipal officers, personnel, and citizens, 7-4-4303.

7-32-4110. Procedure for reinstatement on police force. (1) An applicant for a position on the police force who has already served 20 years or more in the aggregate on the police force of the city or town to which he is applying for reinstatement may make application within 1 year from the date on which his name was removed from the active list of police officers to the police commission of that city or town wherein he last served, and his application must be considered by said police commission within 30 days after receipt of said application.

(2) Said commission shall not require the applicant to have a physical examination or other examination required of applicants for a position on the police force; and in the event that the police commission recommends the reinstatement of said applicant as a member of the police force, the probationary term required of applicants for positions shall be dispensed with as to such applicant for reinstatement. It shall be the duty of the mayor to submit to the city council of said city at its next regular meeting the recommendation of the police commission; and in the event that a majority of the city council vote in favor of adopting the recommendation of the commission, said applicant shall be immediately reinstated as a police officer in said city or town.

History: En. Sec. 1, Ch. 205, L. 1939; R.C.M. 1947, 11-1808.

Cross-References

General powers of Municipal Council, 7-5-4101.

Powers and duties of Mayor related to administration and executive function, 7-5-4102.

7-32-4111. Examination of applicants for position on police force. (1) All applicants for positions on the police force whose applications shall have been referred to the police commission shall be required to successfully undergo an examination before the police commission and to receive a certificate from said commission that the applicant is qualified for such appointment for the probationary period upon the police force.

(2) Any applicant who shall make any false statement to the police commission as to his age or other required qualifications at his examination before

the police commission shall be subject to suspension or dismissal from the police force after trial.

History: En. Sec. 5, Ch. 136, L. 1907; Sec. 3308, Rev. C. 1907; amd. Sec. 2, Ch. 198, L. 1921; re-en. Sec. 5099, R.C.M. 1921; amd. Sec. 3, Ch. 119, L. 1923; re-en. Sec. 5099, R.C.M. 1935; R.C.M. 1947, 11-1805(part).

Cross-References

Veterans' public employment preference, Title 39, ch. 29.

Handicapped persons' public employment preference, Title 39, ch. 30.

7-32-4112. Qualifications of police officers. A member of a police department on the active list of any city at the time of appointment under this part may not be less than 18 years of age, must be a citizen of the United States, and shall meet the minimum qualifying standards for employment promulgated by the board of crime control.

History: (1)En. Sec. 1, Ch. 100, L. 1927; amd. Sec. 1, Ch. 16, L. 1929; amd. Sec. 1, Ch. 120, L. 1929; re-en. Sec. 5108.1, R.C.M. 1935; amd. Sec. 1, Ch. 93, L. 1947; amd. Sec. 12, Ch. 94, L. 1973; Sec. 11-1817, R.C.M. 1947; (2)En. Sec. 12, Ch. 136, L. 1907; Sec. 3315, Rev. C. 1907; re-en. Sec. 5106, R.C.M. 1921; amd. Sec. 6, Ch. 119, L. 1923; re-en. Sec. 5106, R.C.M. 1935; amd. Sec. 1, Ch. 29, L. 1959; amd. Sec. 1, Ch. 47, L. 1971; amd. Sec. 1, Ch. 66, L. 1971; amd. Sec. 1, Ch. 56, L. 1973; amd. Sec. 1, Ch. 60, L. 1973; amd. Sec. 12, Ch. 335, L. 1974; Sec. 11-1814, R.C.M. 1947; R.C.M. 1947, 11-1814, 11-1817; amd. Sec. 8, Ch. 263, L. 1979; amd. Sec. 1, Ch. 150, L. 1995.

Compiler's Comments

1995 Amendment: Chapter 150 after "18 years of age" deleted "or more than 35 years of age, but this restriction does not apply to any member of any police department as of July 2, 1973, to honorably discharged persons who served in the armed forces of the United States in time of war, providing such time of service is not less than 3 months, or to applicants for reinstatement under 7-32-4110"; and made minor changes in style. Amendment effective March 16, 1995.

Cross-References

Employment standards of Board of Crime Control, 7-32-303.

7-32-4113. Probationary period and confirmation of appointment. (1) Every applicant who has passed the examination and received the certificate referred to in 7-32-4108 must first serve for a probationary term of not more than 1 year. At any time before the end of such probationary term, the mayor, or the manager in those cities operating under the commission-manager plan, may revoke such appointment.

(2) After the end of such probationary period and within 30 days thereafter, the appointment of such applicant must be submitted to the city council or commission, and if such appointment is confirmed by the city council or commission, such applicant becomes a member of the police force and shall hold such position during good behavior unless suspended or discharged as provided by law.

History: En. Sec. 3, Ch. 136, L. 1907; Sec. 3306, Rev. C. 1907; amd. Sec. 1, Ch. 198, L. 1921; re-en. Sec. 5097, R.C.M. 1921; amd. Sec. 2, Ch. 119, L. 1923; re-en. Sec. 5097, R.C.M. 1935; amd. Sec. 3, Ch. 152, L. 1947; amd. Sec. 1, Ch. 160, L. 1973; R.C.M. 1947, 11-1803(part).

Cross-References

Powers of Mayor related to municipal officers, personnel, and citizens, 7-4-4303.

General powers of Municipal Council, 7-5-4101.

Probationary period for Deputy Sheriff, 7-32-2105.

7-32-4114. Restrictions on activities of policemen. (1) Except as provided in subsection (2), a member of the police force may not hold any other office or be employed in any other department of the city or town government.

(2) A member of the police force of a third-class city or of a town may be employed in another department of the city or town government. However, the member may not hold political office in the city or town government.

(3) The fact that a person is an officer or member of the police department does not deprive the person's spouse or any member of the person's family of the right to participate in political activity or to hold public or political office.

(4) An officer or member of the police department may participate in political activity provided that the officer does not do so while on duty or in uniform or that it does not otherwise interfere with the performance of duties.

History: En. Secs. 8, 9, 10, Ch. 136, L. 1907; Secs. 3311, 3312, 3313, Rev. C. 1907; re-en. Secs. 5102, 5103, 5104, R.C.M. 1921; re-en. Secs. 5102, 5103, 5104, R.C.M. 1935; R.C.M. 1947, 11-1810(part), 11-1811, 11-1812; amd. Sec. 1, Ch. 385, L. 1981; amd. Sec. 1, Ch. 124, L. 1993.

7-32-4115. Exemptions of members of police force. No member of the police force shall be liable to military or jury duty or to arrest on civil process while actually on duty.

History: En. Sec. 8, Ch. 136, L. 1907; Sec. 3311, Rev. C. 1907; re-en. Sec. 5102, R.C.M. 1921; re-en. Sec. 5102, R.C.M. 1935; R.C.M. 1947, 11-1810(part).

Cross-References

Persons exempt from arrest, 46-6-102.

7-32-4116. Minimum wage of police in first- and second-class cities. (1) Each duly confirmed member of a police department of cities of the first and second class of Montana is entitled to a minimum wage for a daily service of 8 hours' work of at least $750 per month for the first year of service and thereafter at least $750 a month plus 1% of the minimum base monthly salary of $750 for each additional year of service up to and including the 20th year of additional service.

(2) This section applies to cities and towns not of the first class which have elected to come under the provisions of Chapter 120, Laws of 1929, as amended, or Chapter 335, Laws of 1974, as amended.

(3) Added salary for years of service will be based on the base monthly salary as established in this section and not on the actual current salary.

History: (1)En. Sec. 1, Ch. 55, L. 1935; re-en. Sec. 5108.16, R.C.M. 1935; amd. Sec. 2, Ch. 96, L. 1939; amd. Sec. 1, Ch. 294, L. 1947; amd. Sec. 1, Ch. 47, L. 1951; amd. Sec. 1, Ch. 28, L. 1957; amd. Sec. 1, Ch. 266, L. 1967; amd. Sec. 1, Ch. 298, L. 1969; amd. Sec. 1, Ch. 314, L. 1973; amd. Sec. 2, Ch. 438, L. 1975; Sec. 11-1832, R.C.M. 1947; (2)En. Sec. 2, Ch. 55, L. 1935; re-en. Sec. 5108.17, R.C.M. 1935; Sec. 11-1833, R.C.M. 1947; (3)En. Sec. 2, Ch. 266, L. 1967; Sec. 11-1832.1, R.C.M. 1947; R.C.M. 1947, 11-1832, 11-1832.1, 11-1833; amd. Sec. 9, Ch. 263, L. 1979; amd. Sec. 35, Ch. 575, L. 1981.

Cross-References

Classification of municipalities, 7-1-4111.

Minimum wage, 39-3-404.

7-32-4117. Group insurance for policemen — funding. (1) Cities of all classes, if they provide insurance for other city employees under Title 2, chapter 18, part 7, shall:

(a) provide the same insurance to their respective policemen;

(b) notwithstanding Title 2, chapter 18, part 7, pay no less than the premium rate in effect as of July 1, 1980, for insurance coverage for policemen and their dependents;

(c) provide for collective bargaining or other agreement processes to negotiate additional premium payments beyond the amount guaranteed by subsection (1)(b).

(2) In compliance with 1-2-112, the administration of this section is declared a public purpose of a city, which may be paid out of the general fund of the governing body and financed by a levy not to exceed 2 mills on the taxable value of property within the city or town.

History: En. 11-1024.3, 11-1024.4 by Secs. 1, 2, Ch. 308, L. 1975; R.C.M. 1947, 11-1024.3, 11-1024.4; amd. Sec. 1, Ch. 88, L. 1981.

Cross-References

Authorization to levy special taxes and assessments, 7-6-4406.

Police protection association — contributions for group life insurance and representation, 7-32-4122, 7-32-4123.

7-32-4118. Work period — days off duty without loss of compensation. (1) The chief of police may establish the work period for officers and other personnel in the department and may establish a work period other than that provided in 39-3-405 for determining when an employee must be paid overtime compensation. The total hours in all work periods in a calendar year may not exceed 2,080.

(2) Each officer or other employee of the police force in every city of the first and second class shall, in each calendar year, be given a minimum of 104 days off duty without loss of compensation, not including holidays, sick leave, vacation leave, or other types of compensated time off duty.

History: En. Sec. 1, Ch. 53, L. 1931; re-en. Sec. 5108.15, R.C.M. 1935; amd. Sec. 1, Ch. 65, L. 1957; R.C.M. 1947, 11-1831; amd. Sec. 1, Ch. 562, L. 1983.

Cross-References

Classification of municipalities, 7-1-4111.

Hours of work for Deputy Sheriff of county of first or second class, 7-32-2111.

Overtime compensation, 39-3-405.

7-32-4119. Overtime compensation. Members of police departments of cities of the first and second class, except those officers holding the rank of captain or above, are entitled to overtime compensation for hours worked in excess of the work period established by the chief of police under 7-32-4118.

History: En. 11-1832.2 by Sec. 1, Ch. 333, L. 1973; R.C.M. 1947, 11-1832.2; amd. Sec. 2, Ch. 562, L. 1983.

Cross-References

Classification of municipalities, 7-1-4111.

Overtime compensation, 39-3-405.

7-32-4120. Expenditure of state payments by municipality not having police retirement system — annual report. (1) As used in this section, "employee" means a person employed by a municipal police department, including police officers.

(2) A city or town not governed by the provisions of chapter 9 or 19 of Title 19 shall only expend the payment received pursuant to 19-19-305 for police department employee training, for equipment and personnel relating to substance abuse enforcement, or to purchase pensions for employees of its police department.

(3) The city treasurer or town clerk of the cities or towns shall, on or before April 1 of each year, report to the state auditor as to the expenditures of all funds received pursuant to 19-19-305.

History: En. Sec. 4, Ch. 261, L. 1965; R.C.M. 1947, 11-1837; amd. Sec. 36, Ch. 575, L. 1981; amd. Sec. 1, Ch. 60, L. 1991.

Cross-References

Office of City Treasurer, 7-4-4701.

7-32-4121. Action to recover salary. (1) Actions to recover salaries by members of the police departments of cities must be commenced within 6 months after the cause of action shall have accrued.

(2) No action for unpaid salary can be maintained by members of the police department of cities except for service actually rendered and, if suspended or placed on the eligible list, then only for the days the member of the police department reports for duty.

(3) The word "action", as used in this section, is to be construed, whenever it is necessary to do so, as including a special proceeding of a civil nature.

History: (1)En. Sec. 1, Ch. 11, Ex. L. 1919; re-en. Sec. 9036, R.C.M. 1921; re-en. Sec. 9036, R.C.M. 1935; Sec. 93-2610, R.C.M. 1947; (2)En. Sec. 2, Ch. 11, Ex. L. 1919; re-en. Sec. 9037, R.C.M. 1921; re-en. Sec. 9037, R.C.M. 1935; Sec. 93-2611, R.C.M. 1947; (3)En. Sec. 559, C. Civ. Proc. 1895; re-en. Sec. 6476, Rev. C. 1907; re-en. Sec. 9066, R.C.M. 1921; Cal. C. Civ. Proc. Sec. 363; re-en. Sec. 9066, R.C.M. 1935; Sec. 93-2720, R.C.M. 1947; R.C.M. 1947, 93-2610, 93-2611, 93-2720.

Cross-References

Commissioner to take wage assignments, 39-3-211.

7-32-4122. Contributions for group life insurance and representation. (1) Unless the police protective association of the city or town chooses not to participate, as provided in 7-32-4123, an employer shall deduct from each police officer's monthly compensation, except that of a police chief, assistant chief, or captain, an amount equal to 0.5% of the base salary paid to newly confirmed police officers in the city or town. The employer shall pay this amount on a monthly basis to the treasurer of the Montana police protective association to be used to pay premiums on a group life insurance policy for contributing police officers of participating city and town associations and to defray expenses incurred by the association when representing members of the plan.

(2) An employer may not deduct the amount provided for in subsection (1) from the monthly compensation of a police chief, assistant chief, or captain unless that person notifies his employer in writing to make the deduction.

(3) A person who contributes under this section is a full member of the Montana police protective association and is entitled to all membership rights and benefits, including those benefits provided in subsection (1).

(4) For the purposes of this section, "police officer" means an officer who participates in the police officers' retirement system under Title 19, chapter 9.

History: En. Sec. 1, Ch. 403, L. 1989.

Cross-References

Group insurance for policemen — funding, 7-32-4117.

State firemen's association — group life insurance deduction, 19-13-601.

7-32-4123. Nonparticipation. (1) The members of a city or town police protective association may by a vote of three-fourths of the membership cease the participation of all the members in the provision of group life insurance through salary deductions. Salary deductions for payment of group life insurance premiums and representation may not be made by the city or town of the nonparticipating association. An association may resume participation by a vote of three-fourths of the membership of the city or town police protective association.

(2) Notice of nonparticipation or resumption of participation must be provided to the governing body of the city or town and to the Montana police protective association.

History: En. Sec. 2, Ch. 403, L. 1989.

7-32-4124 through 7-32-4130 reserved.

7-32-4131. Compensation and allowance for sick or injured policemen. Whenever any member of a police department in any city or town shall, on account of sickness or disability suffered or sustained while a member of such police department and not caused or brought on by dissipation or abuse, be confined to any hospital or his home and shall require medical attention and care, the officer of such police department may be allowed, by the city council, his salary as such police officer during his absence and an amount equal to his expenses while confined for such injury or sickness.

History: En. Sec. 6, Ch. 100, L. 1927; amd. Sec. 6, Ch. 120, L. 1929; re-en. Sec. 5108.6, R.C.M. 1935; R.C.M. 1947, 11-1822.

Cross-References

General powers of Municipal Council, 7-5-4101.

Workers' compensation, Title 39, ch. 71.

7-32-4132. Payment of partial salary amount of officer injured in performance of duty. (1) A member of a municipal law enforcement agency of a first- or second-class municipality who is injured in the performance of the member's duties and who requires medical or other remedial treatment for injuries that render the member unable to perform the member's duties must be paid by the municipality the difference between the member's net salary, following adjustments for income taxes and pension contributions, and the amount received from workers' compensation until the disability has ceased, as determined by workers' compensation, or for a period not to exceed 1 year, whichever occurs first.

(2) To qualify for the partial salary payment provided for in subsection (1), the member of the law enforcement agency must be unable to perform the member's duties as a result of the injury.

History: En. 11-1822.1 by Sec. 1, Ch. 451, L. 1977; R.C.M. 1947, 11-1822.1; amd. Sec. 1, Ch. 290, L. 1979; amd. Sec. 1, Ch. 251, L. 1993.

Cross-References

Classification of municipalities, 7-1-4111.

Workers' compensation, Title 39, ch. 71.

7-32-4133. Repealed. Sec. 5, Ch. 290, L. 1979.

History: En. 11-1822.2 by Sec. 2, Ch. 451, L. 1977; R.C.M. 1947, 11-1822.2.

7-32-4134. Repealed. Sec. 5, Ch. 290, L. 1979.

History: En. 11-1822.3 by Sec. 3, Ch. 451, L. 1977; R.C.M. 1947, 11-1822.3.

7-32-4135. Discontinuation of salary when retirement allowance granted. Payment of a partial salary amount under 7-32-4132 shall be discontinued if the officer is disabled for an undetermined duration and is granted a disability retirement allowance under Title 19, chapters 9 and 19. If an application for such a retirement allowance is not made by the officer, application therefor may be made by the chief executive officer of the municipality by which such officer is employed.

History: En. 11-1822.4 by Sec. 4, Ch. 451, L. 1977; R.C.M. 1947, 11-1822.4; amd. Sec. 2, Ch. 290, L. 1979.

Cross-References

Powers of Mayor related to municipal officers, personnel, and citizens, 7-4-4303.

Powers and duties of Mayor related to administration and executive functions, 7-5-4102.

7-32-4136. Assignment to light duty or another agency. (1) Whenever, in the opinion of the municipality, supported by a physician's opinion, the officer is able to perform specified types of light police duty, payment of his partial salary amount under 7-32-4132 shall be discontinued if he refuses to perform such light police duty when it is available and offered to him. Such light duty shall be consistent with the officer's status as a law enforcement officer.

(2) With his consent, the officer may be transferred to another department or agency within the municipality.

History: En. 11-1822.5 by Sec. 5, Ch. 451, L. 1977; R.C.M. 1947, 11-1822.5; amd. Sec. 3, Ch. 290, L. 1979.

7-32-4137. Effect on probationary status. If the injured officer is on probationary status at the time he becomes injured, the balance of his probationary time shall be suspended until he returns to regular duty or is discharged for cause.

History: En. 11-1822.6 by Sec. 6, Ch. 451, L. 1977; R.C.M. 1947, 11-1822.6.

7-32-4138. Subrogation. The municipality has a cause of action for reimbursement of sums it has paid to an officer as salary and for medical treatment against any third party against whom the officer has a cause of action for the injury which necessitated the payments by the municipality.

History: En. 11-1822.7 by Sec. 7, Ch. 451, L. 1977; R.C.M. 1947, 11-1822.7.

7-32-4139 through 7-32-4150 reserved.

7-32-4151. Police commission required in all cities and some towns. (1) In all cities and some towns, the mayor, or the manager in those cities operating under the commission-manager plan, shall nominate and, with the consent of the city council or commission, appoint three residents of such city or town who shall have the qualifications required by law to hold a municipal office therein and who shall constitute a board to be known by the name of "police commission".

(2) This section shall apply to organized police departments in every city and town of the state which have three or more full-time law enforcement officials, regardless of the form of government under which said city or town may be operating or may at any time adopt.

History: En. Sec. 4, Ch. 136, L. 1907; Sec. 3307, Rev. C. 1907; re-en. Sec. 5098, R.C.M. 1921; amd. Sec. 1, Ch. 119, L. 1923; re-en. Sec. 5098, R.C.M. 1935; amd. Sec. 1, Ch. 96, L. 1939; amd. Secs. 4, 5, Ch. 152, L. 1947; amd. Sec. 1, Ch. 194, L. 1975; R.C.M. 1947, 11-1804(part).

Cross-References

Municipal commission-manager government, Title 7, ch. 3, part 43.

Municipalities, Title 7, ch. 4, part 41.

7-32-4152. Term and compensation of members of police commission. (1) The appointees to the police commission shall hold office for 3 years, and one member must be appointed annually at the first regular meeting of the city council or commission in May of each year. However, a member serving on the commission during the hearing or deciding of an appeal under 7-32-4155 shall continue to serve on the commission for that appeal until a decision has been made; a new member may not sit on the commission for business.

(2) The compensation of the members of a board must be fixed by the city council or commission, not to exceed $10 per day or more than $50 per month for any month for each member in cities of the first and second class.

History: En. Sec. 4, Ch. 136, L. 1907; Sec. 3307, Rev. C. 1907; re-en. Sec. 5098, R.C.M. 1921; amd. Sec. 1, Ch. 119, L. 1923; re-en. Sec. 5098, R.C.M. 1935; amd. Sec. 1, Ch. 96, L. 1939; amd. Secs. 4, 5, Ch. 152, L. 1947; amd. Sec. 1, Ch. 194, L. 1975; R.C.M. 1947, 11-1804(part); amd. Sec. 1, Ch. 453, L. 1979; amd. Sec. 3, Ch. 468, L. 1993.

Cross-References

Compensation and duties of city employees, 7-5-4110.

Conduct of Municipal Council business, 7-5-4121.

7-32-4153. Meaning of word mayor. Wherever the word "mayor" is used in 7-32-4109, 7-32-4160, and 7-32-4161, it is intended to include "city manager", "city commissioner", or any other name or designation used to identify or designate the chief executive of any city or municipality.

History: En. Sec. 6, Ch. 136, L. 1907; Sec. 3309, Rev. C. 1907; re-en. Sec. 5100, R.C.M. 1921; amd. Sec. 4, Ch. 119, L. 1923; re-en. Sec. 5100, R.C.M. 1935; amd. Sec. 1, Ch. 72, L. 1955; amd. Sec. 1, Ch. 28, L. 1959; R.C.M. 1947, 11-1806(11); amd. Sec. 27, Ch. 370, L. 1987; amd. Sec. 4, Ch. 468, L. 1993.

7-32-4154. Role of police commission in examination of applicants for police force. It shall be the duty of the police commission to examine all applicants whose applications have been referred to the commission as to their age, legal, mental, moral, and physical qualifications and their ability to fill the office as a member of the police force. It shall also be the duty of the police commission, subject to the approval of the mayor, to make such rules regarding such examinations not inconsistent with this part or the laws of the state.

History: En. Sec. 5, Ch. 136, L. 1907; Sec. 3308, Rev. C. 1907; amd. Sec. 2, Ch. 198, L. 1921; re-en. Sec. 5099, R.C.M. 1921; amd. Sec. 3, Ch. 119, L. 1923; re-en. Sec. 5099, R.C.M. 1935; R.C.M. 1947, 11-1805(part).

Cross-References

Structure of Department of Public Safety — duties, 7-32-103.

Veterans' public employment preference, Title 39, ch. 29.

Handicapped persons' public employment preference, Title 39, ch. 30.

7-32-4155. Role of police commission in hearing and deciding appeals brought by policemen. (1) The police commission has jurisdiction and it is its duty to hear and decide appeals brought by any member or officer of the police department who has been disciplined, suspended, removed, or discharged by an order of the mayor, city manager, or chief executive.

(2) It is the duty of the police commission, at the time set for hearing an appeal of a police officer, to hear and determine the appeal according to the rules of evidence applicable to courts of record in the state.

History: En. Sec. 6, Ch. 136, L. 1907; Sec. 3309, Rev. C. 1907; re-en. Sec. 5100, R.C.M. 1921; amd. Sec. 4, Ch. 119, L. 1923; re-en. Sec. 5100, R.C.M. 1935; amd. Sec. 1, Ch. 72, L. 1955; amd. Sec. 1, Ch. 28, L. 1959; R.C.M. 1947, 11-1806(part); amd. Sec. 5, Ch. 468, L. 1993.

Cross-References

Department of Public Safety — hearing required for discharge of subordinate employee, 7-32-107.

Right to hearing on termination of Deputy Sheriff's employment, 7-32-2109.

Montana Rules of Evidence, Title 26, ch. 10.

7-32-4156. Appeals to be in writing. An appeal brought by any member of the police force must be in writing in the form required by the police commission, and a copy must be served upon the mayor, city manager, or chief executive at least 30 days before the time fixed for the hearing of the appeal.

History: En. Sec. 6, Ch. 136, L. 1907; Sec. 3309, Rev. C. 1907; re-en. Sec. 5100, R.C.M. 1921; amd. Sec. 4, Ch. 119, L. 1923; re-en. Sec. 5100, R.C.M. 1935; amd. Sec. 1, Ch. 72, L. 1955; amd. Sec. 1, Ch. 28, L. 1959; R.C.M. 1947, 11-1806(2); amd. Sec. 6, Ch. 468, L. 1993.

Cross-References

Sheriffs — written notice of termination of deputy's employment required, 7-32-2108.

7-32-4157. Rights of police officer. The appealing police officer has the right to be present at the hearing in person and by counsel and to be heard and to give and furnish evidence in the police officer's appeal.

History: En. Sec. 6, Ch. 136, L. 1907; Sec. 3309, Rev. C. 1907; re-en. Sec. 5100, R.C.M. 1921; amd. Sec. 4, Ch. 119, L. 1923; re-en. Sec. 5100, R.C.M. 1935; amd. Sec. 1, Ch. 72, L. 1955; amd. Sec. 1, Ch. 28, L. 1959; R.C.M. 1947, 11-1806(part); amd. Sec. 7, Ch. 468, L. 1993.

Cross-References

Rights of the accused, Art. II, sec. 24, Mont. Const.

7-32-4158. Police commission hearings open to public. All hearings must be open to the public.

History: En. Sec. 6, Ch. 136, L. 1907; Sec. 3309, Rev. C. 1907; re-en. Sec. 5100, R.C.M. 1921; amd. Sec. 4, Ch. 119, L. 1923; re-en. Sec. 5100, R.C.M. 1935; amd. Sec. 1, Ch. 72, L. 1955; amd. Sec. 1, Ch. 28, L. 1959; R.C.M. 1947, 11-1806(part); amd. Sec. 8, Ch. 468, L. 1993.

Cross-References

Right to know, Art, II, sec. 9, Mont. Const.

7-32-4159. Subpoena authority of police commission. The chairman or acting chairman of the police commission shall have power to issue subpoenas, attested in its name, to compel the attendance of witnesses at the hearing, and any person duly served with a subpoena is bound to attend in obedience thereto. The police commission shall have the same authority to enforce obedience to the subpoena and to punish the disobedience thereof as is possessed by a judge of the district court in like cases; provided, however, that punishment for disobedience is subject to review by the district court of the proper county.

History: En. Sec. 6, Ch. 136, L. 1907; Sec. 3309, Rev. C. 1907; re-en. Sec. 5100, R.C.M. 1921; amd. Sec. 4, Ch. 119, L. 1923; re-en. Sec. 5100, R.C.M. 1935; amd. Sec. 1, Ch. 72, L. 1955; amd. Sec. 1, Ch. 28, L. 1959; R.C.M. 1947, 11-1806(4).

Cross-References

Subpoenas, Rule 45, M.R.Civ.P. (see Title 25, ch. 20).

Subpoenas and witnesses, Title 26, ch. 2.

7-32-4160. Decision by police commission. The police commission shall, after the conclusion of the hearing, decide the appeal and must have the power, by a decision of a majority of the commission, to sustain, modify, or overrule the disciplinary order of the mayor, city manager, or chief executive.

History: **En. Sec. 6, Ch. 136, L. 1907; Sec. 3309, Rev. C. 1907; re-en. Sec. 5100, R.C.M. 1921; amd. Sec. 4, Ch. 119, L. 1923; re-en. Sec. 5100, R.C.M. 1935; amd. Sec. 1, Ch. 72, L. 1955; amd. Sec. 1, Ch. 28, L. 1959; R.C.M. 1947, 11-1806(5), (6); amd. Sec. 9, Ch. 468, L. 1993.**

Cross-References

Duties of City Clerk related to city records and papers, 7-4-4502.

Powers and duties of Mayor related to administration and executive function, 7-5-4102.

7-32-4161. Enforcement of decision. The mayor shall make an order enforcing the decision of the police commission. The decision or order is subject to review by the district court of the proper county on all questions of fact and all questions of law.

History: **En. Sec. 6, Ch. 136, L. 1907; Sec. 3309, Rev. C. 1907; re-en. Sec. 5100, R.C.M. 1921; amd. Sec. 4, Ch. 119, L. 1923; re-en. Sec. 5100, R.C.M. 1935; amd. Sec. 1, Ch. 72, L. 1955; amd. Sec. 1, Ch. 28, L. 1959; R.C.M. 1947, 11-1806(7); amd. Sec. 10, Ch. 468, L. 1993.**

Cross-References

Powers of Mayor related to municipal officers, personnel, and citizens, 7-4-4303.

Powers and duties of Mayor related to administration and executive function, 7-5-4102.

7-32-4162. Repealed. Sec. 12, Ch. 468, L. 1993.

History: **En. Sec. 6, Ch. 136, L. 1907; Sec. 3309, Rev. C. 1907; re-en. Sec. 5100, R.C.M. 1921; amd. Sec. 4, Ch. 119, L. 1923; re-en. Sec. 5100, R.C.M. 1935; amd. Sec. 1, Ch. 72, L. 1955; amd. Sec. 1, Ch. 28, L. 1959; R.C.M. 1947, 11-1806(9).**

7-32-4163. Repealed. Sec. 12, Ch. 468, L. 1993.

History: **En. Sec. 6, Ch. 136, L. 1907; Sec. 3309, Rev. C. 1907; re-en. Sec. 5100, R.C.M. 1921; amd. Sec. 4, Ch. 119, L. 1923; re-en. Sec. 5100, R.C.M. 1935; amd. Sec. 1, Ch. 72, L. 1955; amd. Sec. 1, Ch. 28, L. 1959; R.C.M. 1947, 11-1806(part).**

7-32-4164. Right to appeal. A member of the police force who is disciplined, suspended, removed, or discharged as a result of a decision by the mayor, city manager, or chief executive has a right of appeal:

(1) pursuant to the terms of a grievance procedure contained in a collective bargaining agreement if the member is covered by a collective bargaining agreement; or

(2) to the police commission. A final decision of the police commission may be appealed to the district court of the proper county. The district court has jurisdiction to review all questions of fact and all questions of law in a suit brought by any officer or member of the police force. A suit to review a decision or an order or for reinstatement to office may not be maintained unless the suit is begun within a period of 60 days after the decision by the police commission has been filed with the city clerk.

History: **En. Sec. 6, Ch. 136, L. 1907; Sec. 3309, Rev. C. 1907; re-en. Sec. 5100, R.C.M. 1921; amd. Sec. 4, Ch. 119, L. 1923; re-en. Sec. 5100, R.C.M. 1935; amd. Sec. 1, Ch. 72, L. 1955; amd. Sec. 1, Ch. 28, L. 1959; R.C.M. 1947, 11-1806(8); amd. Sec. 11, Ch. 468, L. 1993.**

Part 42

Municipal Jails

Part Cross-References

County jails, Title 7, ch. 32, part 22.

7-32-4201. Municipal detention centers authorized. The city or town council has power to establish and maintain a detention center, as defined in 7-32-2120, for the confinement of persons convicted of violating the ordinances of the city or town and to make rules for the government of the same.

History: En. Subd. 35, Sec. 5039, R.C.M. 1921; amd. Sec. 1, Ch. 115, L. 1925; amd. Sec. 1, Ch. 20, L. 1927; re-en. Sec. 5039.34, R.C.M. 1935; R.C.M. 1947, 11-937; amd. Sec. 28, Ch. 461, L. 1989.

Cross-References

General powers of Municipal Council, 7-5-4101.

Detention centers, 7-32-2201.

7-32-4202. Repealed. Sec. 31, Ch. 461, L. 1989.

History: En. Subd. 53, Sec. 5039, R.C.M. 1921; amd. Sec. 1, Ch. 115, L. 1925; amd. Sec. 1, Ch. 20, L. 1927; re-en. Sec. 5039.52, R.C.M. 1935; R.C.M. 1947, 11-955.

7-32-4203. Repealed. Sec. 31, Ch. 461, L. 1989.

History: En. Subd. 52, Sec. 5039, R.C.M. 1921; amd. Sec. 1, Ch. 115, L. 1925; amd. Sec. 1, Ch. 20, L. 1927; re-en. Sec. 5039.51, R.C.M. 1935; R.C.M. 1947, 11-954.

Part 43

Powers of Municipal Council Related to Law Enforcement

Part Cross-References

Law Enforcement, Title 44.

7-32-4301. Regulations governing arrest authorized. The city or town council has power to make regulations authorizing the police of the city or town to make arrests of persons charged with crime:

(1) within the limits of the city or town;
(2) within 5 miles thereof; and
(3) along the line of water supply of the city or town.

History: En. Subd. 58, Sec. 5039, R.C.M. 1921; amd. Sec. 1, Ch. 115, L. 1925; amd. Sec. 1, Ch. 20, L. 1927; re-en. Sec. 5039.57, R.C.M. 1935; R.C.M. 1947, 11-960.

Cross-References

Council rules and discipline, 7-5-4103.

7-32-4302. Control of disturbances of the peace. Within the city or town and within 3 miles of the limits thereof, the city or town council has power to prevent and punish intoxication (subject to the limits established in 53-24-106), fights, riots, loud noises, disorderly conduct, obscenity, and acts or conduct calculated to disturb the public peace or which are offensive to public morals.

History: En. Subd. 25, Sec. 5039, R.C.M. 1921; amd. Sec. 1, Ch. 115, L. 1925; amd. Sec. 1, Ch. 20, L. 1927; re-en. Sec. 5039.24, R.C.M. 1935; amd. Sec. 16, Ch. 302, L. 1974; amd. Sec. 1, Ch. 403, L. 1975; R.C.M. 1947, 11-927.

Cross-References

Control of nuisances, 7-5-4104.

Conduct disruptive of public order, Title 45, ch. 8, part 1.

7-32-4303. Control of shoplifting. The city or town council may define shoplifting and punish persons found guilty of shoplifting.

History: En. 11-990 by Sec. 5, Ch. 274, L. 1974; R.C.M. 1947, 11-990; amd. Sec. 10, Ch. 263, L. 1979; amd. Sec. 253, Ch. 800, L. 1991.

7-32-4304. Control of vagrancy and disorderly conduct. The city or town council has power to define vagrancy and to restrain and punish vagrants, mendicants, and persons guilty of disorderly conduct.

History: **En. Subd. 34, Sec. 5039, R.C.M. 1921; amd. Sec. 1, Ch. 115, L. 1925; amd. Sec. 1, Ch. 20, L. 1927; re-en. Sec. 5039.33, R.C.M. 1935; R.C.M. 1947, 11-936.**

Cross-References

Council rules and discipline, 7-5-4103.

Conduct disruptive of public order, Title 45, ch. 8, part 1.

7-32-4305. Repealed. Sec. 2, Ch. 589, L. 1985.

History: **En. Subd. 55, Sec. 5039, R.C.M. 1921; amd. Sec. 1, Ch. 115, L. 1925; amd. Sec. 1, Ch. 20, L. 1927; re-en. Sec. 5039.54, R.C.M. 1935; R.C.M. 1947, 11-957(part).**

7-32-4306 through 7-32-4310 reserved.

7-32-4311. Maintenance of police telegraph. The city or town council has power to maintain a police telegraph.

History: **En. Subd. 27, Sec. 5039, R.C.M. 1921; amd. Sec. 1, Ch. 115, L. 1925; amd. Sec. 1, Ch. 20, L. 1927; re-en. Sec. 5039.26, R.C.M. 1935; R.C.M. 1947, 11-929(part).**

Cross-References

Criminal justice information, Title 44, ch. 5.

CHAPTER 33

FIRE PROTECTION

Parts 1 through 20 reserved

Part 21 — Rural Fire Districts

7-33-2101. Rural fire districts authorized — petition.
7-33-2102. Notice of hearing.
7-33-2103. Hearing on petition — decision.
7-33-2104. Operation of fire districts.
7-33-2105. Powers and duties of trustees.
7-33-2106. Details relating to board of trustees of fire district.
7-33-2107. Contracts for fire protection services.
7-33-2108. Mutual aid agreements.
7-33-2109. Tax levy, debt incurrence, and bonds authorized.
7-33-2110. Volunteer fire districts or companies — fire departments — not affected by city-county consolidation.
7-33-2111. Fire district capital improvement fund.
7-33-2112 through 7-33-2119 reserved.
7-33-2120. Consolidation of fire districts.
7-33-2121. Division of fire district authorized.
7-33-2122. Petition for division — hearing and notice.
7-33-2123. Decision on petition for division — protest.
7-33-2124. Distribution of assets and liabilities following division.
7-33-2125. Annexation of adjacent territory not contained in a fire district.
7-33-2126. Annexation of adjacent territory contained in a fire district.
7-33-2127. Withdrawal by owner of individual tract adjacent to municipality.
7-33-2128. Dissolution of fire district.
7-33-2129. Annexation of rural fire district property by municipality — responsibility for bonded indebtedness.

Part 22 — Rural Fire Protection

7-33-2201. Authority of county governing body to protect range, farm, and forest resources.
7-33-2202. Functions of county governing body.
7-33-2203. County rural fire chief.
7-33-2204. District fire chief to serve without compensation.
7-33-2205. Establishment of fire season — permit requirements.

7-33-2206. Violations.
7-33-2207. Voluntary urban fire crews for use in rural areas.
7-33-2208. Fire control powers — liability.
7-33-2209. Finance of fire control activities.
7-33-2210. State to be reimbursed for forest fire suppression activities in noncooperating counties.
7-33-2211. Levy against certain properties prohibited.

Part 23 — Fire Protection in Unincorporated Places

7-33-2301. Repealed.
7-33-2302. Repealed.
7-33-2303 through 7-33-2310 reserved.
7-33-2311. Fire companies authorized.
7-33-2312. Organization of fire company.
7-33-2313. Duties of chief.
7-33-2314. Certain exemptions for firefighters.
7-33-2315. Certificate of membership in fire company.
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Part 24 — Fire Service Areas

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7-33-2402. Area services.
7-33-2403. Operation of fire service area.
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7-33-4101. Fire department authorized and required.
7-33-4102. Applicability of part.
7-33-4103. Composition of fire department.
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7-33-4115 through 7-33-4120 reserved.
7-33-4121. Rules governing employment in fire departments.
7-33-4122. Term of appointment of firefighters — probationary period.
7-33-4123. Authority to suspend firefighters.
7-33-4124. Suspension procedure.
7-33-4125. Reduction and subsequent increase in number of firefighters based on seniority.
7-33-4126. Repealed.
7-33-4127. Compensation of fire department personnel.
7-33-4128. Minimum wages of firefighters in cities of first and second class.
7-33-4129. Repealed.
7-33-4130. Group insurance for firefighters — funding.
7-33-4131. Firefighter's rights in event of city-county consolidation.
7-33-4132. Repealed.
7-33-4133. Payment of partial salary to firefighter injured in performance of duty.

Part 42 — Powers of Municipal Council Related to Fire Services

7-33-4201. Establishment of fire department and fire alarm system.
7-33-4202. Provision for fire equipment.
7-33-4203. Repealed.
7-33-4204. Inspection and regulation of fire hazards.
7-33-4205. Regulation of explosives and inflammable materials.
7-33-4206. Regulation of bonfires, fireworks, and other fire-causing agents.
7-33-4207. Regulation of industries with fire-causing potential.
7-33-4208. Adoption of fire code.

Chapter Cross-References

Firefighters' unified retirement, Title 19, ch. 13.

Volunteer Firefighters' Compensation Act, Title 19, ch. 17.

Firefighters' retirement, Title 19, ch. 18.

State fire prevention and investigation program, Title 50, ch. 3.

Fire protection equipment, Title 50, ch. 39.

Fire safety in public buildings, Title 50, ch. 61.

Fire hazards, Title 50, ch. 62.

Investigation of fires, Title 50, ch. 63.

Parts 1 through 20 reserved

Part 21
Rural Fire Districts

7-33-2101. Rural fire districts authorized — petition. The board of county commissioners is authorized to establish fire districts in any unincorporated territory or town upon presentation of a petition in writing signed by the owners of 50% or more of the area of the privately owned lands included within the proposed district who constitute a majority of the taxpayers who are freeholders of such area and whose names appear upon the last-completed assessment roll.

History: En. Sec. 3237, Pol. C. 1895; re-en. Sec. 2081, Rev. C. 1907; amd. Sec. 1, Ch. 16, L. 1915; amd. Sec. 1, Ch. 16, L. 1921; re-en. Sec. 5148, R.C.M. 1921; amd. Sec. 1, Ch. 15, L. 1931; re-en. Sec. 5148, R.C.M. 1935; amd. Sec. 1, Ch. 118, L. 1945; amd. Sec. 2, Ch. 97, L. 1947; amd. Sec. 1, Ch. 75, L. 1953; amd. Sec. 1, Ch. 75, L. 1957; amd. Sec. 1, Ch. 48, L. 1959; amd. Sec. 1, Ch. 77, L. 1959; amd. Sec. 1, Ch. 49, L. 1963; amd. Sec. 1, Ch. 45, L. 1969; amd. Sec. 2, Ch. 81, L. 1977; R.C.M. 1947, 11-2008(part).

Cross-References

General authority of County Commissioners, 7-5-2101.

Assessment and map books, Title 15, ch. 8, part 7.

7-33-2102. Notice of hearing. The board shall, within 10 days after the receipt of the petition, give notice of the hearing thereof at least 10 days prior to the hearing:

(1) by mailing a copy of the notice as provided in 7-1-2122 to each freeholder in the district at the address shown in the assessment roll;

(2) by causing notices of the time and place of such hearing to be posted in at least three of the most public places within the area proposed to be established as a fire district; and

(3) by publishing the notice as provided in 7-1-2121.

History: En. Sec. 3237, Pol. C. 1895; re-en. Sec. 2081, Rev. C. 1907; amd. Sec. 1, Ch. 16, L. 1915; amd. Sec. 1, Ch. 16, L. 1921; re-en. Sec. 5148, R.C.M. 1921; amd. Sec. 1, Ch. 15, L. 1931; re-en. Sec. 5148, R.C.M. 1935; amd. Sec. 1, Ch. 118, L. 1945; amd. Sec. 2, Ch.

97, L. 1947; amd. Sec. 1, Ch. 75, L. 1953; amd. Sec. 1, Ch. 75, L. 1957; amd. Sec. 1, Ch. 48, L. 1959; amd. Sec. 1, Ch. 77, L. 1959; amd. Sec. 1, Ch. 49, L. 1963; amd. Sec. 1, Ch. 45, L. 1969; amd. Sec. 2, Ch. 81, L. 1977; R.C.M. 1947, 11-2008(part); amd. Sec. 33, Ch. 349, L. 1985.

Cross-References

Requirements for compliance with notice provisions, 2-3-104.

County printing, Title 7, ch. 5, part 24.

7-33-2103. Hearing on petition — decision. (1) The board shall proceed to hear the petition at the time set or at any time within 5 days thereafter to which the same is postponed or continued with due notice and may grant the same unless it is established thereat that the petition bears insufficient signatures as above required or, if originally sufficient, that by reason of written withdrawals thereof it has become insufficient.

(2) The board may adjust the boundaries of the proposed district to reflect any freeholder's written request for subtraction or annexation of parcels of the freeholder's land adjacent to the boundary line of the proposed district. Such written request must be submitted to the board prior to or on the date set for hearing on the petition.

(3) The board shall render its decision within 30 days after the hearing.

History: En. Sec. 3237, Pol. C. 1895; re-en. Sec. 2081, Rev. C. 1907; amd. Sec. 1, Ch. 16, L. 1915; amd. Sec. 1, Ch. 16, L. 1921; re-en. Sec. 5148, R.C.M. 1921; amd. Sec. 1, Ch. 15, L. 1931; re-en. Sec. 5148, R.C.M. 1935; amd. Sec. 1, Ch. 118, L. 1945; amd. Sec. 2, Ch. 97, L. 1947; amd. Sec. 1, Ch. 75, L. 1953; amd. Sec. 1, Ch. 75, L. 1957; amd. Sec. 1, Ch. 48, L. 1959; amd. Sec. 1, Ch. 77, L. 1959; amd. Sec. 1, Ch. 49, L. 1963; amd. Sec. 1, Ch. 45, L. 1969; amd. Sec. 2, Ch. 81, L. 1977; R.C.M. 1947, 11-2008(part); amd. Sec. 1, Ch. 470, L. 1985.

Cross-References

Informal proceedings, 2-4-604.

7-33-2104. Operation of fire districts. Whenever the board of county commissioners shall have established a fire district in any unincorporated territory, town, or village, said commissioners:

(1) may contract with a city, town, or private fire company to furnish fire protection for property within said district; or

(2) shall appoint five qualified trustees to govern and manage the affairs of the fire district.

History: En. Sec. 1, Ch. 107, L. 1911; amd. Sec. 1, Ch. 19, L. 1921; re-en. Sec. 5149, R.C.M. 1921; amd. Sec. 1, Ch. 130, L. 1925; re-en. Sec. 5149, R.C.M. 1935; amd. Sec. 3, Ch. 97, L. 1947; amd. Sec. 2, Ch. 75, L. 1953; amd. Sec. 2, Ch. 77, L. 1959; amd. Sec. 1, Ch. 118, L. 1959; amd. Sec. 1, Ch. 2, L. 1965; amd. Sec. 1, Ch. 333, L. 1969; amd. Sec. 1, Ch. 120, L. 1973; R.C.M. 1947, 11-2010(part).

Cross-References

Interlocal agreements, Title 7, ch. 11, part 1.

7-33-2105. Powers and duties of trustees. (1) The trustees shall prepare and adopt suitable bylaws.

(2) The trustees shall have the authority to provide adequate and standard firefighting and emergency response apparatus, equipment, personnel, housing, and facilities for the protection of the district. They shall appoint and form fire companies that shall have the same duties, exemptions, and privileges as other fire companies.

(3) The trustees shall prepare annual budgets and request special levies therefor. The budget laws relating to county budgets shall, as far as applicable, apply to fire districts.

History: En. Sec. 1, Ch. 107, L. 1911; amd. Sec. 1, Ch. 19, L. 1921; re-en. Sec. 5149, R.C.M. 1921; amd. Sec. 1, Ch. 130, L. 1925; re-en. Sec. 5149, R.C.M. 1935; amd. Sec. 3, Ch. 97, L. 1947; amd. Sec. 2, Ch. 75, L. 1953; amd. Sec. 2, Ch. 77, L. 1959; amd. Sec. 1, Ch. 118, L. 1959; amd. Sec. 1, Ch. 2, L. 1965; amd. Sec. 1, Ch. 333, L. 1969; amd. Sec. 1, Ch. 120, L. 1973; R.C.M. 1947, 11-2010(part); amd. Sec. 1, Ch. 144, L. 1991.

Cross-References

County budget law, Title 7, ch. 6, part 23.

Procurement of architectural, engineering, and land surveying services by governmental entities, Title 18, ch. 8, part 2.

7-33-2106. Details relating to board of trustees of fire district. (1) (a) The five trustees initially appointed by the county commissioners shall hold staggered terms of office until their successors are elected or appointed and qualified as hereinafter provided.

(b) The initial trustees' terms of office shall be drawn by lot and include:

(i) 3 years for one trustee;

(ii) 2 years for two trustees; and

(iii) 1 year for two trustees.

(c) Upon expiration of the terms provided in subsection (1)(b), each trustee shall serve a 3-year term of office.

(2) Trustees shall be elected as provided in subsection (3) of this section, 13-1-104(3), and 13-1-401 or appointed as provided in subsection (4) of this section. The term of office shall be 3 years beginning at the first district meeting following their election or appointment and continuing until their successors are elected or appointed and qualified. Appointments to fill vacancies shall be made by the county governing body and appointees shall hold office until the next regular election. An elector, as defined in Title 13, who resides in the district or any holder of title to lands within the district who presents a proof of payment of taxes on the lands at the polling place is eligible to vote in the election.

(3) Candidates for the office of trustee of the fire district to be filled by election may be nominated by petition filed with the election administrator or deputy election administrator at least 75 days before the election day and signed by at least five electors of the district.

(4) If no nominations are made for one or more trustee offices, the county governing body shall appoint one or more trustees as necessary to fill those offices.

(5) The trustees shall organize by choosing a chairman and appointing one member to act as secretary.

History: En. Sec. 1, Ch. 107, L. 1911; amd. Sec. 1, Ch. 19, L. 1921; re-en. Sec. 5149, R.C.M. 1921; amd. Sec. 1, Ch. 130, L. 1925; re-en. Sec. 5149, R.C.M. 1935; amd. Sec. 3, Ch. 97, L. 1947; amd. Sec. 2, Ch. 75, L. 1953; amd. Sec. 2, Ch. 77, L. 1959; amd. Sec. 1, Ch. 118, L. 1959; amd. Sec. 1, Ch. 2, L. 1965; amd. Sec. 1, Ch. 333, L. 1969; amd. Sec. 1, Ch. 120, L. 1973; R.C.M. 1947, 11-2010(part); amd. Sec. 1, Ch. 213, L. 1979; amd. Sec. 390, Ch. 571, L. 1979; amd. Sec. 1, Ch. 27, L. 1981; amd. Sec. 1, Ch. 502, L. 1983; amd. Sec. 23, Ch. 250, L. 1985; amd. Sec. 1, Ch. 146, L. 1991; amd. Sec. 6, Ch. 591, L. 1991.

Cross-References

General authority of County Commissioners, 7-5-2101.

7-33-2107. Contracts for fire protection services. (1) The trustees of such fire district, provided that the owners of 10% of the taxable value of the property in any such fire district may elect to make such a contract:

(a) may contract with the council of any city or town or with the trustees of any other fire district established in any unincorporated territory, town, or village which has any boundary line lying within 5 straight-line miles of any boundary line of such district, whether the city or town or other fire district shall lie within the same county or another county, for the extension of fire protection service by the city or town or by such other fire district to property included within such district; and

(b) may agree to pay a reasonable consideration therefor.

(2) Likewise, the trustees may contract to permit such fire district's equipment and facilities to be used by the cities, towns, or other fire districts which have any boundary lines lying within 5 straight-line miles of any boundary line of such district.

(3) Likewise, the trustees may enter into contracts with public or private parties under which such district fire company may extend fire protection to public or private property lying outside of such district or any other district or city limits but within 5 straight-line miles of any boundary line of such district, whether such public or private property shall lie within the same county or another county. Such district fire company may use such fire district's equipment and facilities outside of such district in the performance of such contracts.

(4) All money received from such contracts shall be deposited in the county treasurer's office and credited to the fire district fund holding such contracts.

(5) The relationship between the fire district and the city, town, or private fire service shall be that of an independent contractor.

History: (1) thru (4)En. Sec. 1, Ch. 107; L. 1911; amd. Sec. 1, Ch. 19, L. 1921; re-en. Sec. 5149, R.C.M. 1921; amd. Sec. 1, Ch. 130, L. 1925; re-en. Sec. 5149, R.C.M. 1935; amd. Sec. 3, Ch. 97, L. 1947; amd. Sec. 2, Ch. 75, L. 1953; amd. Sec. 2, Ch. 77, L. 1959; amd. Sec. 1, Ch. 118, L. 1959; amd. Sec. 1, Ch. 2, L. 1965; amd. Sec. 1, Ch. 333, L. 1969; amd. Sec. 1, Ch. 120, L. 1973; Sec. 11-2010, R.C.M. 1947; (5)En. Sec. 3237, Pol. C. 1895; re-en. Sec. 2081, Rev. C. 1907; amd. Sec. 1, Ch. 16, L. 1915; amd. Sec. 1, Ch. 16, L. 1921; re-en. Sec. 5148, R.C.M. 1921; amd. Sec. 1, Ch. 15, L. 1931; re-en. Sec. 5148, R.C.M. 1935; amd. Sec. 1, Ch. 118, L. 1945; amd. Sec. 2, Ch. 97, L. 1947; amd. Sec. 1, Ch. 75, L. 1953; amd. Sec. 1, Ch. 75, L. 1957; amd. Sec. 1, Ch. 48, L. 1959; amd. Sec. 1, Ch. 77, L. 1959; amd. Sec. 1, Ch. 49, L. 1963; amd. Sec. 1, Ch. 45, L. 1969; amd. Sec. 2, Ch. 81, L. 1977; Sec. 11-2008, R.C.M. 1947; R.C.M. 1947, 11-2008(part), 11-2010(c).

Cross-References

Duties of County Treasurer, 7-6-2111.

Interlocal agreements, Title 7, ch. 11, part 1.

Contracts, Title 28, ch. 2 and 3.

7-33-2108. Mutual aid agreements. (1) A mutual aid agreement is an agreement for protection against natural or manmade disasters.

(2) Fire district trustees may enter mutual aid agreements with the proper authority of:

(a) other fire districts;
(b) unincorporated municipalities;
(c) incorporated municipalities;
(d) state agencies which have fire-prevention services;
(e) private fire-prevention agencies;
(f) federal agencies; and
(g) fire service areas.

History: En. Sec. 1, Ch. 107, L. 1911; amd. Sec. 1, Ch. 19, L. 1921; re-en. Sec. 5149, R.C.M. 1921; amd. Sec. 1, Ch. 130, L. 1925; re-en. Sec. 5149, R.C.M. 1935; amd. Sec. 3, Ch. 97, L. 1947; amd. Sec. 2, Ch. 75, L. 1953; amd. Sec. 2, Ch. 77, L. 1959; amd. Sec. 1, Ch. 118, L. 1959; amd. Sec. 1, Ch. 2, L. 1965; amd. Sec. 1, Ch. 333, L. 1969; amd. Sec. 1, Ch. 120, L. 1973; R.C.M. 1947, 11-2010(d); amd. Sec. 2, Ch. 149, L. 1993.

Cross-References

Interlocal agreements, Title 7, ch. 11, part 1.

7-33-2109. Tax levy, debt incurrence, and bonds authorized. (1) At the time of the annual levy of taxes, the board of county commissioners may levy a special tax upon all property within a rural fire district for the purpose of buying or maintaining fire protection facilities and apparatus, including emergency response apparatus, for the district or for the purpose of paying to a city, town, or private fire service the consideration provided for in any contract with the council of the city, town, or private fire service for the purpose of furnishing fire protection service to property within the district. The tax must be collected as are other taxes.

(2) The board of county commissioners or the trustees, if the district is governed by trustees, may pledge the income of the district, subject to the requirements and limitations of 7-33-2105(3), to secure financing necessary to procure equipment and buildings to house the equipment.

(3) In addition to the levy authorized in subsection (1), a district may borrow money by the issuance of bonds to provide funds for the payment of all or part of the cost of buying or maintaining fire protection facilities and apparatus, including emergency response apparatus, for the district.

(4) The amount of debt incurred pursuant to subsection (2) and the amount of bonds issued pursuant to subsection (3) and outstanding at any time may not exceed 18% of the taxable value of the property in the district as ascertained by the most recent assessment for state and county taxes prior to the incurrence of debt or the issuance of the bonds.

(5) The bonds must be authorized, sold, and issued and provisions must be made for their payment in the manner and subject to the conditions and limitations prescribed for the issuance of bonds by counties under Title 7, chapter 7, part 22.

History: En. Sec. 3237, Pol. C. 1895; re-en. Sec. 2081, Rev. C. 1907; amd. Sec. 1, Ch. 16, L. 1915; amd. Sec. 1, Ch. 16, L. 1921; re-en. Sec. 5148, R.C.M. 1921; amd. Sec. 1, Ch. 15, L. 1931; re-en. Sec. 5148, R.C.M. 1935; amd. Sec. 1, Ch. 118, L. 1945; amd. Sec. 2, Ch. 97, L. 1947; amd. Sec. 1, Ch. 75, L. 1953; amd. Sec. 1, Ch. 75, L. 1957; amd. Sec. 1, Ch. 48, L. 1959; amd. Sec. 1, Ch. 77, L. 1959; amd. Sec. 1, Ch. 49, L. 1963; amd. Sec. 1, Ch. 45, L. 1969; amd. Sec. 2, Ch. 81, L. 1977; R.C.M. 1947, 11-2008(part); amd. Sec. 1, Ch. 459, L. 1991; amd. Sec. 1, Ch. 170, L. 1995.

Compiler's Comments

1995 Amendment: Chapter 170 inserted (2) allowing the Board of County Commissioners or board of trustees to pledge income of the district to secure financing of equipment and buildings; in (3), before "district", deleted "rural fire"; in (4) inserted two references to incurring debt; adjusted subsection references; and made minor changes in style.

Cross-References

General authority of County Commissioners, 7-5-2101.

Authorization for county mill levy, 7-6-2501.

7-33-2110. Volunteer fire districts or companies — fire departments — not affected by city-county consolidation. (1) Notwithstanding any other provision of law, the adoption of a city-county consolidated local government has no effect on the existence of a volunteer fire department, a volunteer fire company, or a fire district created and legally in existence pursuant to the provisions of this part unless otherwise specifically provided by charter.

(2) No right or benefit of any member of a volunteer fire district, company, or department created pursuant to the provisions of this part in a retirement or pension plan, or payments provided under 19-17-103 may be abrogated by the adoption of a city-county consolidated local government unless otherwise specifically provided by charter.

History: **En. Sec. 1, Ch. 193, L. 1979.**

Cross-References

City-county consolidation — option 1, Title 7, ch. 3, part 11.

City-county consolidation — option 2, Title 7, ch. 3, parts 12 and 13.

7-33-2111. Fire district capital improvement fund. The trustees of a fire district may establish a capital improvement fund. The fund may be used for the acquisition and replacement of equipment or facilities. The cost of the equipment must exceed $5,000 and have a life expectancy of 5 years or more.

History: **En. Sec. 1, Ch. 224, L. 1991.**

7-33-2112 through 7-33-2119 reserved.

7-33-2120. Consolidation of fire districts. (1) Two or more rural fire districts may consolidate to form a single rural fire district upon an affirmative vote of each rural fire district's board of trustees. At the time they vote to consolidate, the boards of trustees must also adopt a consolidation plan. The plan must contain:

(a) a timetable for consolidation, including the effective date of consolidation, which must be after the time allowed for protests to the creation of the consolidated rural fire district under subsection (3);

(b) the name of the new rural fire district;

(c) a boundary map of the new rural fire district; and

(d) the estimated financial impact of consolidation on the average taxpayer within the proposed district.

(2) Within 14 days of the date that the trustees vote to consolidate, notice of the consolidation must be published as provided in 7-1-2121 in each county in which any part of the consolidated fire district will be located. A public hearing on the consolidation must be held within 14 days of the first publication of notice. The hearing must be held before the joint boards of trustees at a time and place set forth in the publication of notice.

(3) Property owners of each affected rural fire district may submit written protests opposing consolidation to the trustees of their district. If within 21 days of the first publication of notice more than 50% of the property owners in an existing district protest the consolidation, it is void.

(4) After consolidation, the former rural fire districts constitute a single rural fire district governed under the provisions of 7-33-2104 through 7-33-2106.

History: **En. Sec. 1, Ch. 338, L. 1989.**

Cross-References

Publication of notice of fire district consolidation, 7-1-2121.

7-33-2121. Division of fire district authorized. Fire districts may be divided as provided in 7-33-2122 through 7-33-2124.

History: En. Sec. 3237, Pol. C. 1895; re-en. Sec. 2081, Rev. C. 1907; amd. Sec. 1, Ch. 16, L. 1915; amd. Sec. 1, Ch. 16, L. 1921; re-en. Sec. 5148, R.C.M. 1921; amd. Sec. 1, Ch. 15, L. 1931; re-en. Sec. 5148, R.C.M. 1935; amd. Sec. 1, Ch. 118, L. 1945; amd. Sec. 2, Ch. 97, L. 1947; amd. Sec. 1, Ch. 75, L. 1953; amd. Sec. 1, Ch. 75, L. 1957; amd. Sec. 1, Ch. 48, L. 1959; amd. Sec. 1, Ch. 77, L. 1959; amd. Sec. 1, Ch. 49, L. 1963; amd. Sec. 1, Ch. 45, L. 1969; amd. Sec. 2, Ch. 81, L. 1977; R.C.M. 1947, 11-2008(part).

7-33-2122. Petition for division — hearing and notice. (1) Whenever a petition in writing shall be made to the county commissioners, signed by the owners of 20% or more of the privately owned lands of an area proposed to be detracted from the original district who constitute 20% or more of the taxpayers who are freeholders within such proposed detracted area and whose names appear upon the last-completed assessment roll, the county commissioners shall, within 10 days from the receipt of such petition, give notice of the hearing of the petition by mailing a copy of the notice by first-class mail to each freeholder in the district at the address shown in the assessment roll and by causing a notice thereof to be posted, at least 10 days prior to the time appointed by them for the consideration of the petition, in at least three of the most public places within the proposed detracted area and also in at least three of the most public places within the remaining area.

(2) The petition for detraction shall describe the boundaries of the proposed detracted area and the boundaries of the remaining area.

(3) The county commissioners shall, on the day fixed for hearing such petition (or on any legally postponed day), proceed to hear the petition.

History: En. Sec. 3237, Pol. C. 1895; re-en. Sec. 2081, Rev. C. 1907; amd. Sec. 1, Ch. 16, L. 1915; amd. Sec. 1, Ch. 16, L. 1921; re-en. Sec. 5148, R.C.M. 1921; amd. Sec. 1, Ch. 15, L. 1931; re-en. Sec. 5148, R.C.M. 1935; amd. Sec. 1, Ch. 118, L. 1945; amd. Sec. 2, Ch. 97, L. 1947; amd. Sec. 1, Ch. 75, L. 1953; amd. Sec. 1, Ch. 75, L. 1957; amd. Sec. 1, Ch. 48, L. 1959; amd. Sec. 1, Ch. 77, L. 1959; amd. Sec. 1, Ch. 49, L. 1963; amd. Sec. 1, Ch. 45, L. 1969; amd. Sec. 2, Ch. 81, L. 1977; R.C.M. 1947, 11-2008(part).

Cross-References

Informal disposition and hearings, 2-4-603.

Division of county into districts, 7-5-2103.

7-33-2123. Decision on petition for division — protest. The petition shall be granted and the original districts shall thereupon be divided into separate districts unless at the time of the hearing on such petition protests shall be presented by the owners of 50% or more of the area of the privately owned lands included within the entire original district who constitute a majority of the taxpayers who are freeholders of the entire original district and whose names appear upon the last-completed assessment roll. If such required amount of protests are presented, the petition for division shall be disallowed.

History: En. Sec. 3237, Pol. C. 1895; re-en. Sec. 2081, Rev. C. 1907; amd. Sec. 1, Ch. 16, L. 1915; amd. Sec. 1, Ch. 16, L. 1921; re-en. Sec. 5148, R.C.M. 1921; amd. Sec. 1, Ch. 15, L. 1931; re-en. Sec. 5148, R.C.M. 1935; amd. Sec. 1, Ch. 118, L. 1945; amd. Sec. 2, Ch. 97, L. 1947; amd. Sec. 1, Ch. 75, L. 1953; amd. Sec. 1, Ch. 75, L. 1957; amd. Sec. 1, Ch. 48, L. 1959; amd. Sec. 1, Ch. 77, L. 1959; amd. Sec. 1, Ch. 49, L. 1963; amd. Sec. 1, Ch. 45, L. 1969; amd. Sec. 2, Ch. 81, L. 1977; R.C.M. 1947, 11-2008(part).

Cross-References

Division of county into districts, 7-5-2103.

7-33-2124. Distribution of assets and liabilities following division. (1) Upon the division of districts, money on hand shall be apportioned between the divided areas according to their respective taxable valuations. All other assets of the original district shall become the property of the remaining area, but a reasonable value shall be placed upon such other assets, and the remaining area shall become indebted to the detracted area for its proportionate share thereof, based upon taxable valuations.

(2) Any detracted area shall remain liable for any existing warrant and bonded indebtedness of the original district.

History: En. Sec. 3237, Pol. C. 1895; re-en. Sec. 2081, Rev. C. 1907; amd. Sec. 1, Ch. 16, L. 1915; amd. Sec. 1, Ch. 16, L. 1921; re-en. Sec. 5148, R.C.M. 1921; amd. Sec. 1, Ch. 15, L. 1931; re-en. Sec. 5148, R.C.M. 1935; amd. Sec. 1, Ch. 118, L. 1945; amd. Sec. 2, Ch. 97, L. 1947; amd. Sec. 1, Ch. 75, L. 1953; amd. Sec. 1, Ch. 75, L. 1957; amd. Sec. 1, Ch. 48, L. 1959; amd. Sec. 1, Ch. 77, L. 1959; amd. Sec. 1, Ch. 49, L. 1963; amd. Sec. 1, Ch. 45, L. 1969; amd. Sec. 2, Ch. 81, L. 1977; R.C.M. 1947, 11-2008(part).

Cross-References

Nature of general obligation bonds, 7-7-2205.

Assessment — market value standard — exceptions, 15-8-111.

7-33-2125. Annexation of adjacent territory not contained in a fire district. (1) Adjacent territory that is not already a part of a fire district may be annexed in the following manner:

(a) A petition in writing by the owners of 50% or more of the area of privately owned lands of the adjacent area proposed to be annexed who constitute a majority of the taxpaying freeholders within such proposed area to be annexed and whose names appear upon the last completed assessment roll shall be presented to the board of trustees of the district for approval, and if the proposed annexation is approved by the board of trustees, the petition shall be presented to the board of county commissioners.

(b) At the first regular meeting of the board of county commissioners after the presentation of the petition, the commissioners shall set a date to hold a hearing on such petition. The date of the hearing may not be less than 4 weeks after the date of the presentation of the petition to the board of county commissioners. The board of county commissioners shall publish notice of the hearing at least once a week for 2 successive weeks in a newspaper published within the county.

(2) On the date set for the hearing, the board of county commissioners shall consider the petition and any objections to the annexation. The board shall approve the annexation unless a protest petition signed by a majority of the landowners of the area proposed for annexation is presented at the hearing, in which case the annexation shall be disapproved.

(3) Such annexed territory shall become liable for any outstanding warrant and bonded indebtedness of the original district.

History: En. Sec. 3237, Pol. C. 1895; re-en. Sec. 2081, Rev. C. 1907; amd. Sec. 1, Ch. 16, L. 1915; amd. Sec. 1, Ch. 16, L. 1921; re-en. Sec. 5148, R.C.M. 1921; amd. Sec. 1, Ch. 15, L. 1931; re-en. Sec. 5148, R.C.M. 1935; amd. Sec. 1, Ch. 118, L. 1945; amd. Sec. 2, Ch. 97, L. 1947; amd. Sec. 1, Ch. 75, L. 1953; amd. Sec. 1, Ch. 75, L. 1957; amd. Sec. 1, Ch. 48, L. 1959; amd. Sec. 1, Ch. 77, L. 1959; amd. Sec. 1, Ch. 49, L. 1963; amd. Sec. 1, Ch. 45, L. 1969; amd. Sec. 2, Ch. 81, L. 1977; R.C.M. 1947, 11-2008(4)(a); amd. Sec. 1, Ch. 678, L. 1983.

Cross-References

Assessment maps and books, Title 15, ch. 8, part 7.

7-33-2126. Annexation of adjacent territory contained in a fire district. (1) Adjacent territory that is already a part of a fire district may withdraw from such fire district and become annexed to another fire district in the following manner:

(a) A petition in writing by the owners of 50% or more of the privately owned lands of an area which is part of any organized fire district who constitute a majority of the taxpaying freeholders within such area according to the last-completed assessment roll shall be presented to the county commissioners, asking that such area be transferred to and included in any other organized fire district to which said area is adjacent. The petition must set forth the change of boundaries to be affected by such proposed transfer of area.

(b) The commissioners shall hold a hearing on the petition in accordance with the procedure outlined in 7-33-2122. The withdrawal and annexation shall be allowed unless protests are presented at the hearing by the owners of 50% or more of the area of the privately owned lands included within either district affected who constitute a majority of the taxpaying freeholders of either district according to the last-completed assessment roll.

(2) The withdrawals and annexation shall be allowed only upon a showing of more advantageous proximity and communications with the firefighting facilities of the other district.

History: En. Sec. 3237, Pol. C. 1895; re-en. Sec. 2081, Rev. C. 1907; amd. Sec. 1, Ch. 16, L. 1915; amd. Sec. 1, Ch. 16, L. 1921; re-en. Sec. 5148, R.C.M. 1921; amd. Sec. 1, Ch. 15, L. 1931; re-en. Sec. 5148, R.C.M. 1935; amd. Sec. 1, Ch. 118, L. 1945; amd. Sec. 2, Ch. 97, L. 1947; amd. Sec. 1, Ch. 75, L. 1953; amd. Sec. 1, Ch. 75, L. 1957; amd. Sec. 1, Ch. 48, L. 1959; amd. Sec. 1, Ch. 77, L. 1959; amd. Sec. 1, Ch. 49, L. 1963; amd. Sec. 1, Ch. 45, L. 1969; amd. Sec. 2, Ch. 81, L. 1977; R.C.M. 1947, 11-2008(4)(b).

Cross-References

Assessment maps and books, Title 15, ch. 8, part 7.

7-33-2127. Withdrawal by owner of individual tract adjacent to municipality. In lieu of the detraction procedure set forth in 7-33-2122 and 7-33-2123, whenever a person owns land adjacent to a city or town and wishes to have only that land annexed to the city or town, the land may be detracted as follows:

(1) The owner shall mail notice to the chairman of the trustees of the fire district or, if none, to the board of county commissioners of his intention to request annexation.

(2) The owner shall attach a copy of this notice of intention to his petition to the municipal governing body requesting annexation.

(3) Following adoption of the annexation order under 7-2-4714, the land is detracted from the fire district.

History: En. Sec. 3237, Pol. C. 1895; re-en. Sec. 2081, Rev. C. 1907; amd. Sec. 1, Ch. 16, L. 1915; amd. Sec. 1, Ch. 16, L. 1921; re-en. Sec. 5148, R.C.M. 1921; amd. Sec. 1, Ch. 15, L. 1931; re-en. Sec. 5148, R.C.M. 1935; amd. Sec. 1, Ch. 118, L. 1945; amd. Sec. 2, Ch. 97, L. 1947; amd. Sec. 1, Ch. 75, L. 1953; amd. Sec. 1, Ch. 75, L. 1957; amd. Sec. 1, Ch. 48, L. 1959; amd. Sec. 1, Ch. 77, L. 1959; amd. Sec. 1, Ch. 49, L. 1963; amd. Sec. 1, Ch. 45, L. 1969; amd. Sec. 2, Ch. 81, L. 1977; R.C.M. 1947, 11-2008(5).

7-33-2128. Dissolution of fire district. Any fire district organized under this part may be dissolved by the board of county commissioners upon presentation of a petition therefor signed by the owners of 50% or more of the area of the privately owned lands included within such fire district who constitute a majority of the taxpayers who are freeholders of such area and whose names appear upon the last-completed assessment roll. The procedure and requirements outlined in 7-33-2101 through 7-33-2103 shall apply to such requests for dissolution of fire districts.

History: En. Sec. 3237, Pol. C. 1895; re-en. Sec. 2081, Rev. C. 1907; amd. Sec. 1, Ch. 16, L. 1915; amd. Sec. 1, Ch. 16, L. 1921; re-en. Sec. 5148, R.C.M. 1921; amd. Sec. 1, Ch. 15, L. 1931; re-en. Sec. 5148, R.C.M. 1935; amd. Sec. 1, Ch. 118, L. 1945; amd. Sec. 2, Ch. 97, L. 1947; amd. Sec. 1, Ch. 75, L. 1953; amd. Sec. 1, Ch. 75, L. 1957; amd. Sec. 1, Ch. 48, L. 1959; amd. Sec. 1, Ch. 77, L. 1959; amd. Sec. 1, Ch. 49, L. 1963; amd. Sec. 1, Ch. 45, L. 1969; amd. Sec. 2, Ch. 81, L. 1977; R.C.M. 1947, 11-2008(2).

Cross-References

General authority of County Commissioners, 7-5-2101.

Division of county into districts, 7-5-2103.

7-33-2129. Annexation of rural fire district property by municipality — responsibility for bonded indebtedness. (1) If a municipality annexes property from a rural fire district, the annexed property is liable for any bonded indebtedness of the rural fire district existing as of the date of annexation to the same extent as it would have been liable if not withdrawn.

(2) A municipality may:

(a) offset the municipal mills levied on the annexed property by the mills levied on the property for bonded indebtedness; or

(b) annually appropriate funds to the rural fire district in an amount equal to the mills levied on the annexed property for bonded indebtedness.

History: En. Sec. 2, Ch. 459, L. 1991.

Part 22
Rural Fire Protection

Part Cross-References

Natural resources — protection from fire, Title 76, ch. 11, part 1.

7-33-2201. Authority of county governing body to protect range, farm, and forest resources. For the purpose of protection and conservation of range, farm, and forest resources and of the prevention of soil erosion, the county governing body may perform the functions provided in this part.

History: En. Sec. 1, Ch. 173, L. 1945; amd. Sec. 12, Ch. 397, L. 1977; R.C.M. 1947, 28-601.

Cross-References

Protection of natural resources from fire, 76-11-101.

Protection of forest resources, Title 76, ch. 13, part 1.

Conservation districts, Title 76, ch. 15.

7-33-2202. Functions of county governing body. The county governing body, with respect to rural fire control, shall carry out the specific authorities and duties hereinafter imposed:

(1) The governing body shall:

(a) provide for the organization of volunteer rural fire control crews; and

(b) provide for the formation of county volunteer fire companies.

(2) The governing body shall appoint a county rural fire chief and such district rural fire chiefs, subject to the direction and supervision of the county rural fire chief, as it considers necessary.

(3) The county governing body shall, within the limitations of 7-33-2205 through 7-33-2209, protect the range, farm, and forest lands within the county from fire.

(4) The county governing body may enter into mutual aid agreements for itself and for county volunteer fire companies with federal, state, local, and other fire protection agencies, including governing bodies of adjoining counties.

History: En. Sec. 2, Ch. 173, L. 1945; amd. Sec. 1, Ch. 229, L. 1973; amd. Sec. 13, Ch. 397, L. 1977; R.C.M. 1947, 28-602(part); amd. Sec. 1, Ch. 615, L. 1983.

Cross-References

Interlocal agreements, Title 7, ch. 11, part 1.

Volunteer Firefighters' Compensation Act, Title 19, ch. 17.

7-33-2203. County rural fire chief. The county rural fire chief may be a regular county officer or other person who in the opinion of the board is the best qualified to perform the duties of this office and who is not entitled to additional compensation for the duties hereby imposed.

History: En. Sec. 2, Ch. 173, L. 1945; amd. Sec. 1, Ch. 229, L. 1973; amd. Sec. 13, Ch. 397, L. 1977; R.C.M. 1947, 28-602(part).

Cross-References

County officers in general, Title 7, ch. 4, part 22.

7-33-2204. District fire chief to serve without compensation. All district fire chiefs shall serve without compensation.

History: En. Sec. 2, Ch. 173, L. 1945; amd. Sec. 1, Ch. 229, L. 1973; amd. Sec. 13, Ch. 397, L. 1977; R.C.M. 1947, 28-602(part).

Cross-References

Division of county into districts, 7-5-2103.

7-33-2205. Establishment of fire season — permit requirements. The county governing body may in its discretion establish fire seasons annually, during which no person may ignite or set any forest fire, slash-burning fire, land-clearing fire, debris-burning fire, or open fire within the county protection area on any forest, range, or croplands subject to the provisions of this part without having obtained an official written permit to ignite or set such fire from the recognized protection agency for that protection area.

History: En. Sec. 3, Ch. 173, L. 1945; amd. Sec. 1, Ch. 40, L. 1955; amd. Sec. 1, Ch. 337, L. 1971; amd. Sec. 1, Ch. 73, L. 1977; amd. Sec. 14, Ch. 397, L. 1977; R.C.M. 1947, 28-603(1).

Cross-References

Control of timber slash and debris, Title 76, ch. 13, part 4.

7-33-2206. Violations. Any person who ignites or sets any forest fire, slash-burning fire, land-clearing fire, debris-burning fire, or open fire within any forest, range, or cropland subject to the provisions of this part without first having obtained a written permit to ignite or set such fire is guilty of a misdemeanor.

History: En. Sec. 3, Ch. 173, L. 1945; amd. Sec. 1, Ch. 40, L. 1955; amd. Sec. 1, Ch. 337, L. 1971; amd. Sec. 1, Ch. 73, L. 1977; amd. Sec. 14, Ch. 397, L. 1977; R.C.M. 1947, 28-603(2).

Cross-References
Classification of offenses, 45-1-201.
Misdemeanor defined, 45-2-101.
Misdemeanor — no penalty specified, 46-18-212.

7-33-2207. Voluntary urban fire crews for use in rural areas. To augment rural crews in case of serious emergency, the governing body may provide for the organization and training of voluntary urban fire crews to be used in rural areas.

History: En. Sec. 3, Ch. 173, L. 1945; amd. Sec. 1, Ch. 40, L. 1955; amd. Sec. 1, Ch. 337, L. 1971; amd. Sec. 1, Ch. 73, L. 1977; amd. Sec. 14, Ch. 397, L. 1977; R.C.M. 1947, 28-603(3).

Cross-References
Volunteer Firefighters' Compensation Act, Title 19, ch. 17.

7-33-2208. Fire control powers — liability. (1) Any county rural fire chief, district rural fire chief or his deputy, or fire service area or fire company fire chief or his deputy may enter private property or direct the entry of fire control crews for the purpose of suppressing fires.

(2) A chief or deputy and the county, rural district, fire company, or fire service area are immune from suit for injury to persons or property resulting from actions taken to suppress fires under this section.

History: En. Sec. 3, Ch. 173, L. 1945; amd. Sec. 1, Ch. 40, L. 1955; amd. Sec. 1, Ch. 337, L. 1971; amd. Sec. 1, Ch. 73, L. 1977; amd. Sec. 14, Ch. 397, L. 1977; R.C.M. 1947, 28-603(4); amd. Sec. 1, Ch. 75, L. 1989.

Cross-References
Criminal trespass to property, 45-6-203.

7-33-2209. Finance of fire control activities. (1) The county governing body is authorized to appropriate funds for the purchase, care, and maintenance of firefighting equipment or for the payment of wages in prevention, detection, and suppression of fires.

(2) If the general fund is budgeted to the full limit, the county governing body may, at any time fixed by law for levy and assessment of taxes, levy a tax of up to 2 mills or at a rate that will raise $15,000, whichever is higher.

History: En. Sec. 3, Ch. 173, L. 1945; amd. Sec. 1, Ch. 40, L. 1955; amd. Sec. 1, Ch. 337, L. 1971; amd. Sec. 1, Ch. 73, L. 1977; amd. Sec. 14, Ch. 397, L. 1977; R.C.M. 1947, 28-603(5); amd. Sec. 1, Ch. 733, L. 1991.

Cross-References
County budget law, Title 7, ch. 6, part 23.
Authorization for county mill levy, 7-6-2501.

7-33-2210. State to be reimbursed for forest fire suppression activities in noncooperating counties. A county that has not entered into a cooperative or other written agreement with the state for forest protection shall reimburse the state for costs incurred by the state in connection with state fire suppression activities resulting from a forest fire emergency in that county.

History: En. 28-605 by Sec. 15, Ch. 397, L. 1977; R.C.M. 1947, 28-605.

Cross-References
Protection of natural resources from fire, 76-11-101.
Cooperative agreements with owners and lessees of land for fire protection, 76-11-102.

7-33-2211. Levy against certain properties prohibited. The levy authorized by this part may not be assessed against properties located within the incorporated boundaries of a city or town.

History: **En. Sec. 2, Ch. 733, L. 1991.**

Cross-References

Incorporated city or town defined, 19-11-101.

Part 23
Fire Protection in Unincorporated Places

7-33-2301. Repealed. Sec. 2, Ch. 310, L. 1993.

History: **En. Sec. 1, p. 101, L. 1876; re-en. Sec. 639, 5th Div. Rev. Stat. 1879; re-en. Sec. 1139, 5th Div. Comp. Stat. 1887; re-en. Sec. 3230, Pol. C. 1895; re-en. Sec. 2074, Rev. C. 1907; re-en. Sec. 5141, R.C.M. 1921; re-en. Sec. 5141, R.C.M. 1935; R.C.M. 1947; 11-2001.**

7-33-2302. Repealed. Sec. 2, Ch. 310, L. 1993.

History: **En. Sec. 2, p. 101, L. 1876; re-en. Sec. 640, 5th Div. Rev. Stat. 1879; re-en. Sec. 1140, 5th Div. Comp. Stat. 1887; re-en. Sec. 3231, Pol. C. 1895; re-en. Sec. 2075, Rev. C. 1907; amd. Sec. 1, Ch. 17, L. 1921; re-en. Sec. 5142, R.C.M. 1921; re-en. Sec. 5142, R.C.M. 1935; R.C.M. 1947, 11-2002.**

7-33-2303 through 7-33-2310 reserved.

7-33-2311. Fire companies authorized. (1) Fire companies in unincorporated towns and villages are organized by filing with the county clerk of the county in which they are located a certificate in writing, signed by the presiding officer and secretary, setting forth the date of organization, name, officers, and roll of active and honorary members or a copy of the certificate provided for in 19-17-402. The certificate and filing must be renewed annually on or before September 1.

(2) A town or village is not allowed more than one company for each 1,000 inhabitants, but one company must be allowed in a city, town, or village in which the population is less than 1,000.

(3) A fire company is not allowed more than 28 certificate members.

History: **En. Sec. 3232, Pol. C. 1895; re-en. Sec. 2076, Rev. C. 1907; re-en. Sec. 5143, R.C.M. 1921; Cal. Pol. C. Sec. 3335; re-en. Sec. 5143, R.C.M. 1935; amd. Sec. 1, Ch. 69, L. 1977; R.C.M. 1947, 11-2003(part); amd. Sec. 1, Ch. 137, L. 1995.**

Compiler's Comments

1995 Amendment: Chapter 137 in (1), before "presiding officer", deleted "foreman or" and after "members" inserted reference to 19-17-402; and made minor changes in style.

Cross-References

Role and duties of County Clerk, 7-4-2611.

7-33-2312. Organization of fire company. (1) Every fire company organized pursuant to 7-33-2311 must choose or elect a foreman, who is the presiding officer, a secretary, and a treasurer and may establish and adopt bylaws and regulations and impose penalties, not exceeding $5 or expulsion for each offense.

(2) Every regularly organized fire department may adopt a department seal, stating the name of the particular fire department to which it belongs. The seal is under the control of and for the use of the secretary and shall be affixed by him to exempt certificates, certificates of active membership, and such other documents as the bylaws may provide. The secretary of every department having a seal must take the constitutional oath of office and give such bond as the bylaws provide for the faithful performance of his duties.

History: **(1)En. Sec. 3233, Pol. C. 1895; re-en. Sec. 2077, Rev. C. 1907; re-en. Sec. 5144, R.C.M. 1921; re-en. Sec. 5144, R.C.M. 1935; amd. Sec. 3, Ch. 489, L. 1977; Sec. 11-2004, R.C.M. 1947; (2)En. Sec. 3235, Pol. C. 1895; re-en. Sec. 2079, Rev. C. 1907; re-en.**

Sec. 5146, R.C.M. 1921; re-en. Sec. 5146, R.C.M. 1935; Sec. 11-2006, R.C.M. 1947; R.C.M. 1947, 11-2004(part), 11-2006(part); amd. Sec. 11, Ch. 263, L. 1979; amd. Sec. 37, Ch. 575, L. 1981.

Cross-References

Filing of oath of office, 7-4-101.

Volunteer Firefighters' Compensation Act, Title 19, ch. 17.

7-33-2313. Duties of chief. (1) The chief of every fire department must inquire into the cause of every fire occurring in the town in which he is chief and keep a record thereof. He must aid in the enforcement of all duly enacted fire ordinances, examine buildings in the process of erection, report violations of ordinances relating to prevention or extinguishment of fires and, when directed by the proper authorities, institute prosecutions therefor, and perform such other duties as may be imposed upon him by proper authority. His compensation, if any, must be fixed and paid by the city or town authorities. He must attend all fires, with his badge of office conspicuously displayed. He must prevent injury to, take charge of, and preserve all property rescued from fires and return it to the owner on the payment of the expenses incurred in saving and keeping it. The amount of the expenses, when not agreed to, shall be fixed by a justice of the peace.

(2) He must devise and formulate or cause to be devised and formulated a course or plan of instruction or training program making available to each regular member of his department not less than 30 hours of instruction per year in matters pertaining to firefighting, and he must supervise the operation of such plan or program.

History: En. Sec. 3236, Pol. C. 1895; re-en. Sec. 2080, Rev. C. 1907; re-en. Sec. 5147, R.C.M. 1921; re-en. Sec. 5147, R.C.M. 1935; amd. Sec. 6, Ch. 118, L. 1965; amd. Sec. 18, Ch. 157, L. 1977; R.C.M. 1947, 11-2007.

Cross-References

Fire safety in public buildings, Title 50, ch. 61, part 1.

Removal of fire hazards, Title 50, ch. 62, part 1.

Investigation of fires, Title 50, ch. 63.

7-33-2314. Certain exemptions for firefighters. The officers and members of regularly organized unpaid fire companies and exempt firefighters are entitled to the following privileges and exemptions:

(1) exemption from payment of poll tax, road tax, and head tax of every description;

(2) exemption from military duty except in case of war, invasion, or insurrection.

History: En. Sec. 3233, Pol. C. 1895; re-en. Sec. 2077, Rev. C. 1907; re-en. Sec. 5144, R.C.M. 1921; re-en. Sec. 5144, R.C.M. 1935; amd. Sec. 3, Ch. 489, L. 1977; R.C.M. 1947, 11-2004(part); amd. Sec. 10, Ch. 379, L. 1983.

7-33-2315. Certificate of membership in fire company. (1) Every firefighter who has served 5 years in an organized company in this state is an exempt firefighter and must receive from the chief engineer of the department to which he belonged a certificate to that effect.

(2) (a) Every active firefighter must have a certificate of that fact, signed by the chief of the fire department or the foreman of the company to which he belongs. Such certificates must be countersigned by the secretary and over the seal of the company, if one is provided.

(b) In lieu of issuing certificates to exempt firefighters by the chief of the fire department, on the certificate of the foreman and secretary of any fire company or the chief of the department, provision being made therefor in the bylaws of the company, "exempt certificates" may be issued by the clerk of the county, over his official seal and signature, which entitles the holder to like exemption from military duty.

(3) Each certificate entitles the holder to exemption from military duty. Every such certificate is prima facie evidence of the facts therein stated.

(4) The secretary of the fire department or fire company must keep a record of all certificates of exemption or active membership, the date thereof and to whom issued, and, when no seal is provided, similar entries of certificates issued to obtain county clerk's certificates.

History: Ap. p. Sec. 3233, Pol. C. 1895; re-en. Sec. 2077, Rev. C. 1907; re-en. Sec. 5144, R.C.M. 1921; re-en. Sec. 5144, R.C.M. 1935; amd. Sec. 3, Ch. 489, L. 1977; Sec. 11-2004, R.C.M. 1947; Ap. p. Sec. 3234, Pol. C. 1895; re-en. Sec. 2078, Rev. C. 1907; re-en. Sec. 5145, R.C.M. 1921; re-en. Sec. 5145, R.C.M. 1935; amd. Sec. 3, Ch. 489, L. 1977; Sec. 11-2005, R.C.M. 1947; Ap. p. Sec. 3235, Pol. C. 1895; re-en. Sec. 2079, Rev. C. 1907; re-en. Sec. 5146, R.C.M. 1921; re-en. Sec. 5146, R.C.M. 1935; Sec. 11-2006, R.C.M. 1947; R.C.M. 1947, 11-2004(part), 11-2005, 11-2006(part); amd. Sec. 11, Ch. 379, L. 1983.

Cross-References

Role and duties of County Clerk, 7-4-2611.

7-33-2316. Volunteer fire districts or companies — fire departments — not affected by city-county consolidation. (1) Notwithstanding any other provision of law, the adoption of a city-county consolidated local government has no effect on the existence of a volunteer fire department, a volunteer fire company, or a fire district created and legally in existence pursuant to the provisions of this part unless otherwise specifically provided by charter.

(2) No right or benefit of any member of a volunteer fire district, company, or department created pursuant to the provisions of this part in a retirement or pension plan, or payments provided under 19-17-103 may be abrogated by the adoption of a city-county consolidated local government unless otherwise specifically provided by charter.

History: En. Sec. 1, Ch. 193, L. 1979.

Cross-References

City-county consolidation — option 1, Title 7, ch. 3, part 11.

City-county consolidation — option 2, Title 7, ch. 3, parts 12 and 13.

Part 24
Fire Service Areas

7-33-2401. Fire service area — establishment — alteration — dissolution. (1) Upon receipt of a petition signed by at least 30 owners of real property in the proposed service area, or by a majority of the owners of real property if there are no more than 30 owners of real property in the proposed service area, the board of county commissioners may establish a fire service area within an unincorporated area not part of a rural fire district in the county to provide the services and equipment set forth in 7-33-2402.

(2) To establish a fire service area, the board shall:

(a) pass a resolution of intent to form the area, with public notice as provided in 7-1-2121 and written notice as provided in 7-1-2122;

(b) hold a public hearing no earlier than 30 or later than 90 days after passage of the resolution of intent;

(c) at the public hearing:

(i) accept written protests from property owners of the area of the proposed area; and

(ii) receive general protests and comments relating to the establishment of the fire service area and its boundaries, rates, kinds, types, or levels of service, or any other matter relating to the proposed fire service area; and

(d) pass a resolution creating the fire service area. The area is created effective 60 days after passage of the resolution unless by that date more than 50% of the property owners of the proposed fire service area protest its creation.

(3) Based on testimony received in the public hearing, the board in the resolution creating the fire service area may establish different boundaries, establish a different fee schedule than proposed, change the kinds, types, or levels of service, or change the manner in which the area will provide services to its residents.

(4) The board of county commissioners may alter the boundaries or the kinds, types, or levels of service or dissolve a fire service area, using the same procedures required for the creation of a fire service area. Any existing indebtedness of a fire service area that is dissolved remains the responsibility of the owners of property within the area, and any assets remaining after all indebtedness has been satisfied must be returned to the owners of property within the area.

History: En. Sec. 1, Ch. 351, L. 1987; amd. Sec. 1, Ch. 345, L. 1991.

7-33-2402. Area services. (1) A fire service area created pursuant to 7-33-2401 may provide residents of the area with adequate and standard:

(a) (i) fire and emergency response equipment, personnel, facilities, and maintenance, for a fire service agency providing service to the area; or

(ii) fire protection by contracting for the services of a fire service agency; and

(b) emergency medical services and equipment, licensed by the department of public health and human services, and related personnel, facilities, and maintenance.

(2) A fire service area may, pursuant to 50-61-102, submit a fire code and a plan for enforcement to the department of justice in order to be certified for local enforcement. However, an appointed board of trustees of a fire service area shall obtain approval of the county commissioners prior to submitting a fire code and a plan of enforcement to the department of justice.

History: En. Sec. 2, Ch. 351, L. 1987; amd. Sec. 2, Ch. 345, L. 1991; amd. Sec. 1, Ch. 212, L. 1995; amd. Sec. 35, Ch. 418, L. 1995; amd. Sec. 33, Ch. 546, L. 1995.

Compiler's Comments

1995 Amendments: Chapter 212 inserted (2) concerning fire code and plan for enforcement for fire service area; and made minor changes in style.

Chapter 418 in (1)(b) substituted "department of public health" for "department of health and environmental sciences". Amendment effective July 1, 1995.

Chapter 546 in (1)(b) substituted "department of public health and human services" for "department of health and environmental sciences". Amendment effective July 1, 1995.

7-33-2403. Operation of fire service area. (1) Whenever the board of county commissioners has established a fire service area, the commissioners may:

(a) govern and manage the affairs of the area;

(b) appoint five qualified trustees to govern and manage the affairs of the area; or

(c) authorize the election of five qualified trustees to govern and manage the affairs of the area. The term of office and procedures for nomination and election are the same as those provided for election of rural fire district trustees in 7-33-2106.

(2) If the commissioners appoint trustees under subsection (1), the provisions of 7-33-2105 and 7-33-2106 shall apply, except that the trustees shall prepare annual budgets and request a schedule of rates therefor.

History: En. Sec. 3, Ch. 351, L. 1987; amd. Sec. 2, Ch. 75, L. 1989.

7-33-2404. Financing of fire service area — fee on structures. (1) In the resolution creating the fire service area and by resolution as necessary thereafter, the board of county commissioners shall establish a schedule of rates to be charged owners of structures that are benefited by the services offered by the fire service area.

(2) The rates must be applied on a fair and equal basis to all classes of structures benefited by the fire service area.

(3) The board of county commissioners shall collect the funds necessary to operate the fire service area by charging the area rate as a special assessment on the owners of structures and collect the assessments with the general taxes of the county. The assessments are a lien on the property so assessed.

(4) The board of county commissioners or the trustees, if the fire service area is governed by trustees under 7-33-2403, may pledge the income of the fire service area to secure financing necessary to procure equipment and buildings to house the equipment. The outstanding amount of such indebtedness may not exceed 7% of the taxable valuation of the area.

History: En. Sec. 4, Ch. 351, L. 1987; amd. Sec. 3, Ch. 75, L. 1989; amd. Sec. 3, Ch. 345, L. 1991.

7-33-2405. Mutual aid agreements. (1) A mutual aid agreement is an agreement for protection against natural or manmade disasters.

(2) The governing body of a fire service area may enter mutual aid agreements with the proper authority of:

(a) other fire service areas;

(b) unincorporated municipalities;

(c) incorporated municipalities;

(d) state agencies that have fire-prevention services;

(e) private fire-prevention agencies;

(f) federal agencies; and

(g) fire districts.

History: En. Sec. 1, Ch. 149, L. 1993.

Parts 25 through 40 reserved

Part 41
Municipal Fire Departments

Part Cross-References

Municipal powers, 7-1-4124.

7-33-4101. Fire department authorized and required. In every city and town of this state there shall be a fire department, which shall be organized, managed, and controlled as provided in this part.

History: En. Sec. 1, p. 73, L. 1899; re-en. Sec. 3326, Rev. C. 1907; re-en. Sec. 5109, R.C.M. 1921; re-en. Sec. 5109, R.C.M. 1935; amd. Sec. 1, Ch. 4, L. 1937; amd. Sec. 1, Ch. 97, L. 1947; amd. Sec. 1, Ch. 151, L. 1947; amd. Sec. 1, Ch. 73, L. 1949; amd. Sec. 3, Ch. 2, L. 1965; R.C.M. 1947, 11-1901(part).

7-33-4102. Applicability of part. (1) The provisions of this part govern and control fire departments in every city or town organized under whatever form of municipal government except where this part is in conflict with the commission form of government provided for in part 42 of chapter 3.

(2) Whenever the provisions of this part conflict with the provisions of chapter 3, part 42, pertaining to the commission form of government, the provisions pertaining to the commission form of government prevail.

History: En. Sec. 1, p. 73, L. 1899; re-en. Sec. 3326, Rev. C. 1907; re-en. Sec. 5109, R.C.M. 1921; re-en. Sec. 5109, R.C.M. 1935; amd. Sec. 1, Ch. 4, L. 1937; amd. Sec. 1, Ch. 97, L. 1947; amd. Sec. 1, Ch. 151, L. 1947; amd. Sec. 1, Ch. 73, L. 1949; amd. Sec. 3, Ch. 2, L. 1965; R.C.M. 1947, 11-1901(part); amd. Sec. 12, Ch. 263, L. 1979.

7-33-4103. Composition of fire department. Such fire department, when established, may consist of one chief of the fire department and as many assistant chiefs of the fire department and such number of firefighters as the council or commission may from time to time provide and may also include a city electrician and as many assistant electricians as the council or commission may from time to time provide.

History: En. Sec. 2, p. 73, L. 1899; re-en. Sec. 3327, Rev. C. 1907; amd. Sec. 1, Ch. 46, L. 1911; re-en. Sec. 5110, R.C.M. 1921; re-en. Sec. 5110, R.C.M. 1935; amd. Sec. 2, Ch. 151, L. 1947; amd. Sec. 3, Ch. 489, L. 1977; R.C.M. 1947, 11-1902(part).

Cross-References

Deputy officers in general, Title 7, ch. 4, part 24.

7-33-4104. Duties of chief and assistant chief of fire department. (1) The chief of the fire department shall have sole command and control over all persons connected with the fire department of the city or town and shall possess full power and authority over its organization, government, and discipline and to that end may from time to time establish such disciplinary rules as he may deem advisable, subject to the approval of the city or town council. He shall have charge of and be responsible for the engines and other apparatus and the property of the town or city furnished the fire department and see that they are at all times ready for use in the extinguishing of fires.

(2) The assistant chief of the fire department shall aid the chief in the work of the department and in his absence shall perform his duties.

History: En. Sec. 6, p. 75, L. 1899; re-en. Sec. 3331, Rev. C. 1907; re-en. Sec. 5114, R.C.M. 1921; re-en. Sec. 5114, R.C.M. 1935; R.C.M. 1947, 11-1906.

Cross-References

General powers of Municipal Council, 7-5-4101.

7-33-4105. Appointment of chief engineer of fire department. (1) The council of any city or town where there is no paid fire department may appoint a chief engineer of the fire department:

(a) to manage and control the fire engines and apparatus furnished by the city or town for the extinguishing and the prevention of fires;

(b) to superintend and direct all fire companies; and

(c) to examine and inspect all buildings, chimneys, flues, and boilers and other things within the city or town and require the same to be put in a safe condition or removed if liable to cause fire.

(2) In case a paid fire department is established in any city or town, the council may by ordinance provide for the maintenance of the same and the employment of the officers and employees thereof.

History: En. Sec. 4816, Pol. C. 1895; re-en. Sec. 3325, Rev. C. 1907; re-en. Sec. 5140, R.C.M. 1921, re-en. Sec. 5140, R.C.M. 1935; R.C.M. 1947, 11-1940.

Cross-References

Compensation and duties of city employees, 7-5-4110.

7-33-4106. Appointment of firefighters. The mayor or manager shall nominate and, with the consent of the council or commission, appoint the chief of the fire department, the assistant chief or chiefs of the fire department, and all firefighters.

History: En. Sec. 2, p. 73, L. 1899; re-en. Sec. 3327, Rev. C. 1907; amd. Sec. 1, Ch. 46, L. 1911; re-en. Sec. 5110, R.C.M. 1921; re-en. Sec. 5110, R.C.M. 1935; amd. Sec. 2, Ch. 151, L. 1947; amd. Sec. 3, Ch. 489, L. 1977; R.C.M. 1947, 11-1902(part).

Cross-References

Powers of Mayor related to municipal officers, personnel, and citizens, 7-4-4303.

Powers and duties of Mayor related to administration and executive function, 7-5-4102.

Veterans' public employment preference, Title 39, ch. 29.

Handicapped persons' public employment preference, Title 39, ch. 30.

7-33-4107. Qualifications of firefighters. The state of Montana determines that age is a valid, bona fide occupational qualification for the position of firefighter because of the rigorous physical demands of the firefighting profession and the expectation of many years of emergency service. The qualifications of firefighters shall be that they:

(1) shall not be more than 34 years of age at the time of original appointment;

(2) shall have passed a physical examination by a practicing physician duly authorized to practice in this state; and

(3) at the option of said city or town, shall be qualified voters of the city or town.

History: En. Sec. 5, p. 74, L. 1899; re-en. Sec. 3330, Rev. C. 1907; re-en. Sec. 5113, R.C.M. 1921; re-en. Sec. 5113, R.C.M. 1935; amd. Sec. 1, Ch. 29, L. 1955; amd. Sec. 1, Ch. 217, L. 1969; R.C.M. 1947, 11-1905(part); amd. Sec. 1, Ch. 82, L. 1981.

7-33-4108. Physical examination. The examination required by 7-33-4107(2) shall be in writing and filed with the city or town clerk. Such examination shall disclose the ability of such applicant to perform the physical work usually required of firefighters in the performance of their duty.

History: **En. Sec. 5, p. 74, L. 1899; re-en. Sec. 3330, Rev. C. 1907; re-en. Sec. 5113, R.C.M. 1921; re-en. Sec. 5113, R.C.M. 1935; amd. Sec. 1, Ch. 29, L. 1955; amd. Sec. 1, Ch. 217, L. 1969; R.C.M. 1947, 11-1905(part).**

Cross-References

Office of Municipal Clerk, Title 7, ch. 4, part 45.

7-33-4109. Supplementary volunteer fire department authorized for cities of second class. (1) In addition to a paid department, the city council, city commission, or other governing body in cities of the second class may make provision for a volunteer fire department.

(2) The city commission or governing department shall be exempted as to compliance with 7-33-4128 insofar as the same may pertain to the said volunteer fire department by way of penalties and infringements.

(3) A volunteer is one who is an enrolled member of the volunteer fire department and assists the paid fire department; who is eligible to serve only on the board of trustees of the fire department relief association of such city (provided not more than three volunteer members are on said board of trustees); but who shall not be entitled to receive a service pension.

(4) The governing body of said city may at its discretion pay an enrolled volunteer firefighter a minimum of $1 for attending a fire and a minimum of $1 for each hour or fraction of an hour after the first hour in active service at said fire or returning any or all equipment to its proper place.

(5) In the attending of fires, any volunteer shall act and serve under the supervision of the chief of the paid fire department.

History: **(1) thru (4)En. Sec. 3, Ch. 136, L. 1939; amd. Sec. 3, Ch. 489, L. 1977; Sec. 11-1936, R.C.M. 1947; (5)En. Sec. 4, Ch. 136, L. 1939; Sec. 11-1937, R.C.M. 1947; R.C.M. 1947, 11-1936, 11-1937; amd. Sec. 4, Ch. 375, L. 1983.**

Cross-References

Classification of municipalities, 7-1-4111.

General powers of Municipal Council, 7-5-4101.

7-33-4110. Volunteer companies not affected. Nothing contained in 7-33-4101 through 7-33-4104, 7-33-4106 through 7-33-4108, 7-33-4112, 7-33-4113, 7-33-4122 through 7-33-4125, and 7-33-4127 shall be held or construed to affect any fire organization known as a volunteer fire company.

History: **En. Sec. 10, p. 76, L. 1899; re-en. Sec. 3333, Rev. C. 1907; re-en. Sec. 5116, R.C.M. 1921; re-en. Sec. 5116, R.C.M. 1935; R.C.M. 1947, 11-1908(part).**

Cross-References

Volunteer Firefighters' Compensation Act, Title 19, ch. 17.

7-33-4111. Tax levy for volunteer fire departments. For the purpose of supporting volunteer fire departments in any city or town which does not have a paid fire department and for the purpose of purchasing the necessary equipment for them, the council in any city or town may levy, in addition to other levies permitted by law, a special tax not exceeding 4 mills upon all of the property of the city or town subject to taxation.

History: **En. Sec. 1, Ch. 26, L. 1927; re-en. Sec. 5116.1, R.C.M. 1935; amd. Sec. 26, Ch. 566, L. 1977; R.C.M. 1947, 11-1909; amd. Sec. 1, Ch. 546, L. 1983.**

Cross-References

Authority to levy special taxes and assessments, 7-6-4406.

7-33-4112. Mutual aid agreements. (1) A mutual aid agreement is an agreement for protection against natural or manmade disasters.

(2) Councils or commissions of incorporated municipalities may enter mutual aid agreements with the proper authority of:

(a) other incorporated municipalities;
(b) fire districts;
(c) unincorporated municipalities;
(d) state agencies which have fire protection services;
(e) private fire-prevention agencies;
(f) federal agencies; and
(g) fire service areas.

History: En. Sec. 1, p. 73, L. 1899; re-en. Sec. 3326, Rev. C. 1907; re-en. Sec. 5109, R.C.M. 1921; re-en. Sec. 5109, R.C.M. 1935; amd. Sec. 1, Ch. 4, L. 1937; amd. Sec. 1, Ch. 97, L. 1947; amd. Sec. 1, Ch. 151, L. 1947; amd. Sec. 1, Ch. 73, L. 1949; amd. Sec. 3, Ch. 2, L. 1965; R.C.M. 1947, 11-1901(b); amd. Sec. 3, Ch. 149, L. 1993.

Cross-References

Interlocal agreements, Title 7, ch. 11, part 1.

7-33-4113. Personnel of fire department not considered municipal officers. The chief of the fire department, the assistant chief or chiefs of the fire department, and the firefighters shall not be deemed officers of the municipal corporation in which such fire department is established.

History: En. Sec. 2, p. 73, L. 1899; re-en. Sec. 3327, Rev. C. 1907; amd. Sec. 1, Ch. 46, L. 1911; re-en. Sec. 5110, R.C.M. 1921; re-en. Sec. 5110, R.C.M. 1935; amd. Sec. 2, Ch. 151, L. 1947; amd. Sec. 3, Ch. 489, L. 1977; R.C.M. 1947, 11-1902(part).

Cross-References

Municipal officers in general, Title 7, ch. 4, part 41.

7-33-4114. Limitation on liability for delays by persons authorized to receive and transmit fire reports. No person, corporation, partnership, or association which is authorized by any city, town, village, or district fire department or by any volunteer fire company to receive any report of fire or which agrees to receive and transmit such report to such fire department or volunteer fire company shall be liable in any civil action for damage to property or persons, including death, caused by delay in reporting or failure to report such fire unless such delay or failure is the result of the gross negligence of such person, corporation, partnership, or association.

History: En. Sec. 1, Ch. 42, L. 1955; R.C.M. 1947, 11-1941.

Cross-References

Liability for negligence as well as willful acts, 27-1-701.

7-33-4115 through 7-33-4120 reserved.

7-33-4121. Rules governing employment in fire departments. The city councils or commissioners of cities of the first and second class shall have power to establish and promulgate rules governing the employment of the members or employees of their respective fire departments.

History: En. Sec. 2, Ch. 91, L. 1917; re-en. Sec. 5139, R.C.M. 1921; re-en. Sec. 5139, R.C.M. 1935; R.C.M. 1947, 11-1939.

Cross-References

Classification of municipalities, 7-1-4111.

Compensation and duties of city employees, 7-5-4110.

Veterans' public employment preference, Title 39, ch. 29.

Handicapped persons' public employment preference, Title 39, ch. 30.

7-33-4122. Term of appointment of firefighters — probationary period. Each appointment shall be first made for a probationary term of 6 months, and thereafter the mayor or manager may nominate and, with the consent of the council or commission, appoint such chief and assistant chief or chiefs of the fire department and firefighters, who shall thereafter hold their respective appointments during good behavior and while they have the physical ability to perform their duties.

History: En. Sec. 2, p. 73, L. 1899; re-en. Sec. 3327, Rev. C. 1907; amd. Sec. 1, Ch. 46, L. 1911; re-en. Sec. 5110, R.C.M. 1921; re-en. Sec. 5110, R.C.M. 1935; amd. Sec. 2, Ch. 151, L. 1947; amd. Sec. 3, Ch. 489, L. 1977; R.C.M. 1947, 11-1902(part).

Cross-References

Powers of Mayor related to municipal officers, personnel, and citizens, 7-4-4303.

7-33-4123. Authority to suspend firefighters. (1) The mayor or manager may suspend the chief and assistant or any firefighter of the fire department for neglect of duty or a violation of any of the rules of the fire department.

(2) The chief of the fire department may suspend the assistant chief of the fire department or any firefighter for like cause.

(3) The assistant chief of the fire department may suspend any firefighter for a like cause.

History: En. Sec. 3, p. 74, L. 1899; re-en. Sec. 3328, Rev. C. 1907; re-en. Sec. 5111, R.C.M. 1921; re-en. Sec. 5111, R.C.M. 1935; amd. Secs. 3 and 4, Ch. 151, L. 1947; amd. Sec. 3, Ch. 489, L. 1977; R.C.M. 1947, 11-1903(part).

Cross-References

Powers of Mayor related to municipal officers, personnel, and citizens, 7-4-4303.

7-33-4124. Suspension procedure. (1) In all cases of suspension the person suspended must be furnished with a copy of the charge against him, in writing, setting forth reasons for the suspension. Such charges must be presented to the next meeting of the council or commission and a hearing had thereon, when the suspended member of the fire department may appear in person or by counsel and make his defense to said charges.

(2) Should the charges not be presented to the next meeting of the council or commission after the suspension or should the charges be found not proven by the council or commission, the suspended person shall be reinstated and be entitled to his usual compensation for the time so suspended.

(3) If such charges are found proven by the council or commission, the council or commission, by a vote of a majority of the whole council or commission, may impose such penalty as it shall determine the offense warrants, either in the continuation of the suspension for a limited time or in the removal of the suspended person from the fire department.

History: En. Sec. 3, p. 74, L. 1899; re-en. Sec. 3328, Rev. C. 1907; re-en. Sec. 5111, R.C.M. 1921; re-en. Sec. 5111, R.C.M. 1935; amd. Secs. 3 and 4, Ch. 151, L. 1947; amd. Sec. 3, Ch. 489, L. 1977; R.C.M. 1947, 11-1903(part).

7-33-4125. Reduction and subsequent increase in number of firefighters based on seniority. (1) Should the council at any time reduce the number of firefighters in the fire department, those most recently appointed shall be selected for retirement from the fire department. The city or town clerk shall keep a list of such retired firefighters.

(2) Should the number of firefighters be again increased by the council, the men on said list shall be called into service, the longest service firefighters being first selected for service in the fire department.

History: **En. Sec. 4, p. 74, L. 1899; re-en. Sec. 3329, Rev. C. 1907; re-en. Sec. 5112, R.C.M. 1921; re-en. Sec. 5112, R.C.M. 1935; amd. Sec. 3, Ch. 489, L. 1977; R.C.M. 1947, 11-1904.**

Cross-References

Duties of City Clerk related to records, 7-4-4502.

Duties of Town Clerk related to records, 7-4-4512.

7-33-4126. Repealed. Sec. 5, Ch. 375, L. 1983.

History: **Ap. p. Sec. 1, Ch. 15, L. 1937; Sec. 11-1931, R.C.M. 1947; Ap. p. Sec. 1, Ch. 136, L. 1939; Sec. 11-1934, R.C.M. 1947; R.C.M. 1947, 11-1931, 11-1934.**

7-33-4127. Compensation of fire department personnel. The compensation of the chief of the fire department and assistant chiefs of the fire department and firefighters in cities and towns where the council or commission shall establish a paid fire department and the city electrician and assistant city electricians shall be fixed by ordinance.

History: **En. Sec. 2, p. 73, L. 1899; re-en. Sec. 3327, Rev. C. 1907; amd. Sec. 1, Ch. 46, L. 1911; re-en. Sec. 5110, R.C.M. 1921; re-en. Sec. 5110, R.C.M. 1935; amd. Sec. 2, Ch. 151, L. 1947; amd. Sec. 3, Ch. 489, L. 1977; R.C.M. 1947, 11-1902(part).**

Cross-References

Compensation and duties of city employees, 7-5-4110.

7-33-4128. Minimum wages of firefighters in cities of first and second class. After July 1, 1976, there shall be paid to each duly appointed and confirmed member of the fire departments of cities or towns of the first and second class of the state a minimum wage for a daily service of 8 consecutive hours of work of at least $750 per month for the first year of service and thereafter at least $750 per month plus 1% of said minimum base monthly salary for each additional year of service.

History: **En. Sec. 1, Ch. 293, L. 1947; amd. Sec. 1, Ch. 51, L. 1951; amd. Sec. 1, Ch. 62, L. 1957; amd. Sec. 1, Ch. 267, L. 1967; amd. Sec. 1, Ch. 342, L. 1969; amd. Sec. 1, Ch. 460, L. 1973; amd. Sec. 1, Ch. 324, L. 1975; Sec. 11-1932, R.C.M. 1947; redes. 41-2303.1 by Sec. 1, Ch. 448, L. 1977; R.C.M. 1947, 41-2303.1(part).**

Cross-References

Classification of municipalities, 7-1-4111.

Compensation and duties of city employees, 7-5-4110.

Minimum wage, 39-3-404.

7-33-4129. Repealed. Sec. 5, Ch. 375, L. 1983.

History: **En. 41-2303.2 by Sec. 2, Ch. 448, L. 1977; R.C.M. 1947, 41-2303.2.**

7-33-4130. Group insurance for firefighters — funding. (1) Cities of the first and second class, if they provide insurance for other city employees under Title 2, chapter 18, part 7, shall:

(a) provide the same insurance to their respective firefighters;

(b) pay no less than the premium rate in effect as of July 1, 1980, for insurance coverage for firefighters and their dependents notwithstanding the provisions of Title 2, chapter 18, part 7;

(c) provide for collective bargaining or other agreement processes to negotiate additional premium payments beyond the amount guaranteed by subsection (1)(b).

(2) Those incorporated cities and towns which require additional funds to finance the provisions of this section may levy on property, by the amount required to meet these provisions, a tax not to exceed 2 mills on the dollar upon all property in the respective city or town. This levy shall be collected in the same manner and at the same time as other taxes are levied.

History: En. 11-1024.1, 11-1024.2 by Secs. 1, 2, Ch. 39, L. 1975; R.C.M. 1947, 11-1024.1, 11-1024.2; amd. Sec. 2, Ch. 88, L. 1981.

Cross-References

Classification of municipalities, 7-1-4111.

Authority to levy special taxes and assessments, 7-6-4406.

7-33-4131. Firefighter's rights in event of city-county consolidation. A firefighter employed by a fire department established as required by law in a city or town of the county prior to the election and qualification of a commission under part 11 or parts 12 and 13 of chapter 3 or other acts of consolidation or disincorporation has the same job tenure rights as though no election and qualification had taken place.

History: En. Sec. 83, Ch. 121, L. 1923; re-en. Sec. 5520.84, R.C.M. 1935; amd. Sec. 1, Ch. 192, L. 1961; amd. Sec. 1, Ch. 34, L. 1975; amd. Sec. 31, Ch. 157, L. 1977; amd. Sec. 3, Ch. 489, L. 1977; R.C.M. 1947, 11-3524(1).

7-33-4132. Repealed. Sec. 5, Ch. 375, L. 1983.

History: En. Sec. 3, Ch. 15, L. 1937; R.C.M. 1947, 11-1933.

7-33-4133. Payment of partial salary to firefighter injured in performance of duty. (1) A member of a fire department of a first- or second-class municipality who is injured in the performance of duty must be paid by the municipality the difference between his net salary, following adjustments for income taxes and pension contributions, and the amount received from workers' compensation until the disability has ceased, as determined by workers' compensation, or for a period not to exceed 1 year, whichever occurs first.

(2) To qualify for the partial salary payment provided for in subsection (1), the firefighter must require medical or other remedial treatment and must be incapable of performing his duties as a result of the injury.

History: En. Sec. 1, Ch. 396, L. 1991.

Part 42

Powers of Municipal Council Related to Fire Services

Part Cross-References

General powers of Municipal Council, 7-5-4101.

7-33-4201. Establishment of fire department and fire alarm system. The city or town council has power to establish a fire department and prescribe and regulate its duties and to maintain a fire alarm.

History: En. Subd. 27, Sec. 5039, R.C.M. 1921; amd. Sec. 1, Ch. 115, L. 1925; amd. Sec. 1, Ch. 20, L. 1927; re-en. Sec. 5039.26, R.C.M. 1935; R.C.M. 1947, 11-929(part).

7-33-4202. Provision for fire equipment. The city or town council has power to erect engine, hose, and hook-and-ladder houses and to provide engines and other implements for the extinguishment of fire.

History: En. Subd. 28, Sec. 5039, R.C.M. 1921; amd. Sec. 1, Ch. 115, L. 1925; amd. Sec. 1, Ch. 20, L. 1927; re-en. Sec. 5039.27, R.C.M. 1935; R.C.M. 1947, 11-930.

Cross-References

Construction, lease, and management of municipal buildings, 7-8-4101.

7-33-4203. Repealed. Sec. 156, Ch. 370, L. 1987.

History: En. Subd. 26, Sec. 5039, R.C.M. 1921; amd. Sec. 1, Ch. 115, L. 1925; amd. Sec. 1, Ch. 20, L. 1927; re-en. Sec. 5039.25, R.C.M. 1935; R.C.M. 1947, 11-928.

7-33-4204. Inspection and regulation of fire hazards. The city or town council has power to inspect chimneys, flues, fireplaces, stovepipes, ruins, structures, and boilers and, when dangerous, to require the same to be removed or put in order and prohibit the use thereof until safe.

History: En. Subd. 29, Sec. 5039, R.C.M. 1921; amd. Sec. 1, Ch. 115, L. 1925; amd. Sec. 1, Ch. 20, L. 1927; re-en. Sec. 5039.28, R.C.M. 1935; R.C.M. 1947, 11-931.

Cross-References

Fire safety in public buildings, Title 50, ch. 61.

Removal of fire hazards, Title 50, ch. 62, part 1.

7-33-4205. Regulation of explosives and inflammable materials. Except as provided in 50-61-120, the city or town council has power to regulate and prevent the storage or handling of gunpowder, giant powder, nitroglycerine, other inflammable explosives or materials, tar, pitch, kerosene, oils, and turpentine and to prohibit the storage of the same within 3 miles of the city limits.

History: En. Subd. 30, Sec. 5039, R.C.M. 1921; amd. Sec. 1, Ch. 115, L. 1925; amd. Sec. 1, Ch. 20, L. 1927; re-en. Sec. 5039.29, R.C.M. 1935; R.C.M. 1947, 11-932; amd. Sec. 3, Ch. 506, L. 1989.

Cross-References

Licensing of persons using explosives in the demolition or construction of buildings, Title 37, ch. 72.

Removal of fire hazards, Title 50, ch. 62, part 1.

7-33-4206. Regulation of bonfires, fireworks, and other fire-causing agents. The city or town council has power to regulate or prohibit the building of bonfires or the explosion, use, or selling of fireworks, firecrackers, torpedoes, other pyrotechnics, or toy pistols or guns within the city or town.

History: En. Subd. 31, Sec. 5039, R.C.M. 1921; amd. Sec. 1, Ch. 115, L. 1925; amd. Sec. 1, Ch. 20, L. 1927; re-en. Sec. 5039.30, R.C.M. 1935; R.C.M. 1947, 11-933.

7-33-4207. Regulation of industries with fire-causing potential. The city or town council has power to regulate, restrain, or prevent the carrying on of manufactories dangerous in causing or producing fires.

History: En. Subd. 55, Sec. 5039, R.C.M. 1921; amd. Sec. 1, Ch. 115, L. 1925; amd. Sec. 1, Ch. 20, L. 1927; re-en. Sec. 5039.54, R.C.M. 1935; R.C.M. 1947, 11-957(part).

Cross-References

Regulation of location of businesses, factories, and steam boilers, 7-21-4204.

7-33-4208. Adoption of fire code. The governing body of an incorporated city or town may adopt technical fire codes, in whole or in part, by reference under the procedure provided in 7-5-4202.

History: En. Sec. 4805, Pol. C. 1895; re-en. Sec. 3265, Rev. C. 1907; re-en. Sec. 5056, R.C.M. 1921; re-en. Sec. 5056, R.C.M. 1935; amd. Sec. 1, Ch. 38, L. 1967; amd. Sec. 1, Ch. 231, L. 1969; amd. Sec. 1, Ch. 111, L. 1975; R.C.M. 1947, 11-1102(part).

Cross-References

Fire safety in public buildings, Title 50, ch. 61.

CHAPTER 34

MEDICAL SERVICES AND BOARDING HOMES FOR THE AGED

Part 1 — Ambulance Services

7-34-101. Ambulance services authorized.
7-34-102. Special mill levy permitted.
7-34-103. Manner of providing ambulance service.
7-34-104. Certain ambulance services unaffected.

Parts 2 through 20 reserved

Part 21 — Hospital Districts

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Chapter Cross-References

Hospitals and related facilities, Title 50, ch. 5.

State assumption of county public assistance programs, Title 53, ch. 2, part 8.

Part 1
Ambulance Services

Part Cross-References

Ambulance service licensing, Title 50, ch. 6, part 3.

7-34-101. Ambulance services authorized. A county, city, or town, acting through its governing body, may establish and maintain an ambulance service for such county, city, or town. Any county, city, or town may contract with any county, city, or town to establish and maintain a joint ambulance service and to share the costs, such costs to be apportioned according to the benefits to accrue, with the proportion to be paid by each to be fixed in advance by joint resolution by the respective governing bodies, if the governing body has received a petition signed by 15% of the electors registered to vote in the county, city, or town at the last preceding general election or in each of the counties, cities, or towns wherein a joint ambulance service is being established.

History: En. Sec. 1, Ch. 238, L. 1961; amd. Sec. 1, Ch. 162, L. 1967; R.C.M. 1947, 69-3601(part).

Cross-References

Interlocal agreements, Title 7, ch. 11, part 1.

7-34-102. Special mill levy permitted. (1) In addition to all other levies authorized by law, each county, city, or town may levy an annual tax up to 1 mill on the dollar of the taxable value of all taxable property within the county, city, or town to defray the costs incurred in providing ambulance service.

(2) In addition to the levy authorized by subsection (1), a county, city, or town may levy an additional 2 mills for the support of ambulance services if, at a regularly scheduled election, the electorate of the county, city, or town approves the imposition of the additional levy.

History: En. Sec. 1, Ch. 238, L. 1961; amd. Sec. 1, Ch. 162, L. 1967; R.C.M. 1947, 69-3601(part); amd. Sec. 1, Ch. 668, L. 1991.

Cross-References

Authority to levy special taxes and assessments, 7-6-4406.

7-34-103. Manner of providing ambulance service. If a county, city, or town establishes or maintains such ambulance service it may, acting through its governing board:

(1) operate the service itself or contract for such service;

(2) buy, rent, lease, or otherwise contract for vehicles, equipment, facilities, operators, or attendants;

(3) adopt rules and establish fees or charges for the furnishing of such ambulance service.

History: En. Sec. 2, Ch. 238, L. 1961; R.C.M. 1947, 69-3602.

Cross-References

Municipal contracts and franchises, Title 7, ch. 5, part 43.

Cooperative agreements — ambulance services, 50-6-304.

7-34-104. Certain ambulance services unaffected. The provisions of this part shall in no way affect county, city, or town ambulance service in operation on March 14, 1961.

History: En. Sec. 3, Ch. 238, L. 1961; R.C.M. 1947, 69-3603.

Parts 2 through 20 reserved

Part 21
Hospital Districts

Part Cross-References

County tax levy for nursing homes and hospital facilities, 7-6-2512.

Procurement of architectural, engineering, and land surveying services by governmental entities, Title 18, ch. 8, part 2.

Hospitals and related facilities, Title 50, ch. 5.

7-34-2101. Purpose of part. The purpose of this part is to authorize the establishment of public hospital districts which shall have power to supply hospital facilities and services and health care facilities and services to residents of districts and, as herein authorized, to others.

History: En. Sec. 1, Ch. 155, L. 1953; amd. Sec. 1, Ch. 257, L. 1969; R.C.M. 1947, 16-4301(part); amd. Sec. 1, Ch. 453, L. 1991.

7-34-2102. Definition. As used in this part, unless the context requires otherwise, "hospital facilities" means a hospital or a hospital-related facility, including outpatient facilities, public health centers, rehabilitation facilities, long-term care facilities, infirmaries, and health care facilities, all as defined in 50-5-101.

History: En. Sec. 1, Ch. 336, L. 1973; R.C.M. 1947, 16-4301.1; amd. Sec. 2, Ch. 453, L. 1991.

Cross-References

Hospital defined, 50-5-101.

7-34-2103. Petition required to create hospital district. Proceedings for creation of a hospital district shall be initiated by a petition signed by not less than 30% of the qualified electors of the proposed hospital district who are taxpayers upon property within the proposed hospital district and whose names appear on the last-completed assessment roll for state and county taxes.

History: En. Sec. 2, Ch. 155, L. 1953; amd. Sec. 2, Ch. 257, L. 1969; R.C.M. 1947, 16-4302(part).

Cross-References

Division of county into districts, 7-5-2103.

Ballot issues — who may petition, 13-27-102.

7-34-2104. Details relating to petition. (1) The petition may consist of one sheet or several sheets, identical in form and fastened together after being circulated and signed so as to form a single, complete petition before being delivered to the county clerk. The petition shall give the post-office address and voting precinct of each petitioner.

(2) Only persons who are qualified to sign such petitions shall be qualified to circulate the same, and there shall be attached to the complete petition the affidavit of some person who circulated or assisted in circulating the petition that he believes the signatures thereon are genuine and the signers knew the contents thereof before signing the same.

History: En. Sec. 2, Ch. 155, L. 1953; amd. Sec. 2, Ch. 257, L. 1969; R.C.M. 1947, 16-4302(part).

7-34-2105. Petition to be filed with county clerk — clerk's certificate. The complete petition, addressed to the board of county commissioners of the county in which the proposed district is situated, shall be filed with the county clerk and recorder, who shall, within 15 days thereafter, carefully examine the same and the county records showing the qualifications of the petitioners and attach it to a certificate under his official signature and the seal of his office, which certificate shall set forth:

(1) the total number of persons who are registered electors within the proposed hospital district and whose names appear upon the last-completed assessment roll for state and county taxes;

(2) which and how many of the persons whose names are subscribed to such petition are possessed of all of the qualifications required of signers to such petition;

(3) whether such qualified signers constitute more or less than 30% of the registered electors of the proposed hospital district who are taxpayers upon property thereon and whose names appear on the last-completed assessment roll for state and county taxes.

History: En. Sec. 2, Ch. 155, L. 1953; amd. Sec. 2, Ch. 257, L. 1969; R.C.M. 1947, 16-4302(part).

Cross-References

Role and duties of County Clerk, 7-4-2611.

7-34-2106. Presentation of petition to board of county commissioners — hearing required. (1) The county clerk and recorder shall present the petition and his certificate to the board of county commissioners at its first meeting held after he has attached his certificate.

(2) The board shall thereupon carefully examine the petition, and if it is found that the petition is in proper form and bears the requisite number of signatures of qualified petitioners, the board shall by resolution call a hearing on the creation of such hospital district.

History: En. Sec. 2, Ch. 155, L. 1953; amd. Sec. 2, Ch. 257, L. 1969; R.C.M. 1947, 16-4302(part).

7-34-2107. Notice of hearing. A notice of the hearing required by 7-34-2106 shall be published as provided in 7-1-2121.

History: En. Sec. 2, Ch. 155, L. 1953; amd. Sec. 2, Ch. 257, L. 1969; R.C.M. 1947, 16-4302(part); amd. Sec. 34, Ch. 349, L. 1985.

7-34-2108. Hearing on petition. At the time fixed for said hearing, the board shall hear all competent and relevant testimony offered in support of or in opposition to said petition and the creation of such district. Said hearing may be adjourned from time to time for the determination of said facts or hearing petitioners or objectors without additional published or posted notice, but no adjournment shall exceed 2 weeks in all from and after the date originally noticed and published for the hearing.

History: En. Sec. 3, Ch. 155, L. 1953; amd. Sec. 3, Ch. 257, L. 1969; R.C.M. 1947, 16-4303.

7-34-2109. Election on question of creating hospital district. The board of county commissioners, upon completion of the hearing provided for in 7-34-2106 through 7-34-2108, shall proceed by resolution to refer the question of the creation of such district to the persons qualified to vote on such proposition.

History: En. Sec. 4, Ch. 155, L. 1953; amd. Sec. 4, Ch. 257, L. 1969; R.C.M. 1947, 16-4304(part).

Cross-References

Resolution requirements, 7-5-121.

7-34-2110. Resolution calling for election. (1) The board of county commissioners in its resolution may make changes in the boundaries of the proposed district that it considers advisable, without including any additional lands not described in the petition, and it shall call an election upon the question of the creation of the district.

(2) The board shall designate in its resolution whether a special election is to be held or whether the matter is to be determined at the next general election. If a special election is ordered, the board shall specify in its order the date for the election. The special election must be held in conjunction with a regular or primary election.

History: En. Secs. 4, 5, Ch. 155, L. 1953; amd. Secs. 4, 5, Ch. 257, L. 1969; R.C.M. 1947, 16-4304(part), 16-4305(part); amd. Sec. 345, Ch. 571, L. 1979; amd. Sec. 62, Ch. 387, L. 1995.

Compiler's Comments

1995 Amendment: Chapter 387 in (2), at end, inserted "The special election must be held in conjunction with a regular or primary election"; and made minor changes in style.

Cross-References

Resolution requirements, 7-5-121.

7-34-2111. Territory of hospital district. A public hospital district may contain the entire territory embraced within a county or any portion or subdivision thereof.

History: En. Sec. 1, Ch. 155, L. 1953; amd. Sec. 1, Ch. 257, L. 1969; R.C.M. 1947, 16-4301(part).

7-34-2112. Conduct of election on question of creating district. (1) The election shall be held in all respects, as nearly as practicable, in conformity with the general election laws.

(2) At the election, the ballots must contain the words "Hospital district — Yes" and "Hospital district — No".

History: En. Sec. 5, Ch. 155, L. 1953; amd. Sec. 5, Ch. 257, L. 1969; R.C.M. 1947, 16-4305(part); amd. Sec. 346, Ch. 571, L. 1979.

Cross-References

Elections, Title 13.

7-34-2113. Who may vote. Only qualified electors residing within the proposed hospital district may vote on the question of the creation of the hospital district.

History: En. Sec. 5, Ch. 155, L. 1953; amd. Sec. 5, Ch. 257, L. 1969; R.C.M. 1947, 16-4305(part); amd. Sec. 2, Ch. 213, L. 1979.

Cross-References

Qualifications of voter, 13-1-111.

7-34-2114. Procedure upon favorable vote. (1) In the event that a majority of the votes cast are in favor of the creation and establishment of said hospital district, the board of county commissioners shall, within 10 days after the election, certify such result by resolution and proceed with the organization of such district as specified in this part.

(2) After 20 days from the passage of such resolution, the validity of the creation of such hospital district and the regularity of all proceedings preliminary thereto shall not be questioned or asserted in any legal action.

History: En. Sec. 6, Ch. 155, L. 1953; amd. Sec. 6, Ch. 257, L. 1969; R.C.M. 1947, 16-4306.

7-34-2115. District to be governed by elected trustees — legal assistance. (1) A hospital district must be governed and managed by a board of three or five trustees, elected by the registered electors residing in the district. The number of trustees on the board and, if the number is set at five, the initial terms of two trustees must be fixed by the bylaws of the district.

(2) The trustees must be elected from among the registered electors qualified to vote at general elections within the district.

(3) The trustees may call upon the county attorney for legal advice and services as they may require.

History: En. Sec. 7, Ch. 155, L. 1953; amd. Sec. 1, Ch. 97, L. 1955; amd. Sec. 7, Ch. 257, L. 1969; amd. Sec. 1, Ch. 399, L. 1971; amd. Sec. 1, Ch. 277, L. 1975; R.C.M. 1947, 16-4307(part); amd. Sec. 2, Ch. 7, L. 1991.

Cross-References

Qualifications of voter, 13-1-111.

7-34-2116. Election of first board of trustees. (1) The first board of trustees shall be elected at the same election held upon the creation of the district, subject to the creation thereof, and shall qualify upon the organization of the district if created.

(2) The trustees may be nominated and have their names appear upon the ballots as provided in 7-34-2117.

History: En. Sec. 7, Ch. 155, L. 1953; amd. Sec. 1, Ch. 97, L. 1955; amd. Sec. 7, Ch. 257, L. 1969; amd. Sec. 1, Ch. 399, L. 1971; amd. Sec. 1, Ch. 277, L. 1975; R.C.M. 1947, 16-4307(part); amd. Sec. 347, Ch. 571, L. 1979; amd. Sec. 2, Ch. 27, L. 1981.

7-34-2117. Procedure for the conduct of election for trustees. (1) All elections of trustees following the election of the first board of trustees shall be conducted at the time provided in 13-1-104(3) and in the manner provided by 13-1-401.

(2) Candidates for the office of trustee must be nominated by petition filed with the election administrator or deputy election administrator at least 75 days before the election day and signed by at least five electors of the district.

(3) If there is no nomination petition filed, it shall not be necessary to hold an election but the board of county commissioners shall appoint a trustee to fill the term, the term to be the same as if the trustee were elected.

History: En. Sec. 7, Ch. 155, L. 1953; amd. Sec. 1, Ch. 97, L. 1955; amd. Sec. 7, Ch. 257, L. 1969; amd. Sec. 1, Ch. 399, L. 1971; amd. Sec. 1, Ch. 277, L. 1975; R.C.M. 1947, 16-4307(part); amd. Sec. 348, Ch. 571, L. 1979; amd. Sec. 3, Ch. 27, L. 1981; amd. Sec. 24, Ch. 250, L. 1985.

7-34-2118. Term of office. (1) The trustees elected for the first board shall serve for terms:

(a) commencing upon their being elected and qualified; and

(b) terminating 1, 2, and 3 years, respectively, from the first district meeting following their election and until their respective successors shall be elected and qualified.

(2) Annually thereafter there may be elected a trustee to serve for a term of 3 years and until his successor shall be qualified. Such term of 3 years shall commence at the first district meeting following the said trustee's election.

History: En. Sec. 7, Ch. 155, L. 1953; amd. Sec. 1, Ch. 97, L. 1955; amd. Sec. 7, Ch. 257, L. 1969; amd. Sec. 1, Ch. 399, L. 1971; amd. Sec. 1, Ch. 277, L. 1975; R.C.M. 1947, 16-4307(part); amd. Sec. 391, Ch. 571, L. 1979; amd. Sec. 4, Ch. 27, L. 1981.

Cross-References

County officers — term of office, 7-4-2205.

7-34-2119. Organization of board of trustees. The trustees at their first meeting shall adopt bylaws for the government and management of the district and shall appoint a qualified person to serve as clerk of the said board, who may or may not be one of their number.

History: En. Sec. 7, Ch. 155, L. 1953; amd. Sec. 1, Ch. 97, L. 1955; amd. Sec. 7, Ch. 257, L. 1969; amd. Sec. 1, Ch. 399, L. 1971; amd. Sec. 1, Ch. 277, L. 1975; R.C.M. 1947, 16-4307(part).

7-34-2120. Compensation of trustees. The trustees shall serve without pay.

History: En. Sec. 7, Ch. 155, L. 1953; amd. Sec. 1, Ch. 97, L. 1955; amd. Sec. 7, Ch. 257, L. 1969; amd. Sec. 1, Ch. 399, L. 1971; amd. Sec. 1, Ch. 277, L. 1975; R.C.M. 1947, 16-4307(part).

7-34-2121. Vacancies. A vacancy upon the board of trustees or in the office of clerk shall be filled by appointment by the remaining members, and the appointee shall serve until the next ensuing election for trustees.

History: En. Sec. 7, Ch. 155, L. 1953; amd. Sec. 1, Ch. 97, L. 1955; amd. Sec. 7, Ch. 257, L. 1969; amd. Sec. 1, Ch. 399, L. 1971; amd. Sec. 1, Ch. 277, L. 1975; R.C.M. 1947, 16-4307(part).

7-34-2122. Powers of district. A hospital district shall have all powers necessary and convenient to the acquisition, betterment, operation, maintenance, and administration of such hospital facilities as its board of trustees shall deem necessary and expedient. Without limitation on the foregoing general grant of powers, a hospital district, acting by its board of trustees, may:

(1) employ nursing, administrative, and other personnel, legal counsel, engineers, architects, accountants, and other qualified persons, who may be paid for their services by monthly salaries, hourly wages, and pension benefits or by such fees as may be agreed upon;

(2) cause reports, plans, studies, and recommendations to be prepared;

(3) lease, purchase, and contract for the purchase of real and personal property by option, contract for deed, or otherwise and acquire real or personal property by gift;

(4) lease or construct, equip, and furnish necessary buildings and grounds and maintain the same;

(5) adopt, by resolution, rules for the operation and administration of any and all hospital facilities under its control and for the admission of persons thereto;

(6) impose by resolution and collect charges for all services and facilities provided and made available by it;

(7) levy taxes as hereinafter prescribed;

(8) borrow money by the issuance of its bonds as hereinafter prescribed;

(9) borrow money by the issuance of notes;

(10) procure insurance against liability of the district or its officers and employees, or both, for torts committed within the scope of their official duties, whether governmental or proprietary, and against damage to or destruction of any of its facilities, equipment, or other property;

(11) sell or lease any of its facilities or equipment as may be deemed expedient;

(12) cause audits to be made of its accounts, books, vouchers, and funds by competent public accountants;

(13) provide educational benefits to qualified individuals, including the payment of tuition, room and board, educational materials, and stipends and the repayment of student loans in return for an agreement by those persons to provide services to the district.

History: En. Sec. 8, Ch. 155, L. 1953; amd. Sec. 8, Ch. 257, L. 1969; R.C.M. 1947, 16-4308(part); amd. Sec. 2, Ch. 349, L. 1991; amd. Sec. 3, Ch. 453, L. 1991.

Cross-References

Records and reports required of health care facilities — confidentiality, 50-5-106.

7-34-2123. Admission to district hospital facilities. Such a hospital district must admit persons to its facilities without regard to race, color, or sex. Such obligation shall not prevent the board of trustees of such hospital district from establishing reasonable minimum rates for hospital quarters, services, and supplies. Indigents needing such services, for the rendition of which provision is made by the laws of Montana, must be admitted to such public hospitals on terms and rates prescribed or authorized by law.

History: En. Sec. 8, Ch. 155, L. 1953; amd. Sec. 8, Ch. 257, L. 1969; R.C.M. 1947, 16-4308(part).

Cross-References

Hospitals — discrimination prohibited, 50-5-105.

7-34-2124 through 7-34-2130 reserved.

7-34-2131. Hospital district bonds and notes authorized. (1) (a) A hospital district may borrow money by the issuance of its bonds to provide funds for payment of part or all of the cost of acquisition, furnishing, equipment, improvement, extension, and betterment of hospital facilities and to provide an adequate working capital for a new hospital.

(b) The amount of bonds issued for such purpose and outstanding at any time may not exceed 22.5% of the taxable value of the property therein as ascertained by the last assessment for state and county taxes previous to the issuance of such bonds.

(c) Such bonds shall be authorized, sold, and issued and provisions made for their payment in the manner and subject to the conditions and limitations prescribed for bonds of school districts by Title 20, chapter 9, part 4.

(2) (a) A hospital district may borrow money by the issuance of notes to provide funds to finance the costs described in subsection (1) and to finance the working capital requirements of the district. The notes must be authorized and in a form and terms prescribed by a resolution adopted by the board of trustees. The notes must mature over a term not to exceed 15 years.

(b) The principal and interest on the notes must be paid from the taxes levied pursuant to 7-34-2133 and 7-34-2134, exclusive of the taxes levied to pay bonds issued in accordance with subsection (1), and all other revenue of the district. The annual amount of principal and interest payable on notes in any fiscal year must be included in the district's budget for that year.

(c) The notes may be secured by a mortgage of or a security interest in all or part of the district's assets and by a pledge of the taxes and revenue of the district, or either of them.

(d) Notes may not be issued unless the projected annual revenue of the district, including the taxes levied pursuant to 7-34-2133 and 7-34-2134 but exclusive of the taxes levied to pay bonds, is at least equal to the sum of the cost of operating and maintaining the hospital district plus the maximum amount of principal and interest due in any future fiscal year on the notes proposed to be issued and all notes outstanding upon the issuance of the proposed notes.

(3) Nothing herein shall be construed to preclude the provisions of Title 50, chapter 6, part 1, allowing the state to apply for and accept federal funds.

History: En. Sec. 8, Ch. 155, L. 1953; amd. Sec. 8, Ch. 257, L. 1969; R.C.M. 1947, 16-4308(part); amd. Sec. 58, Ch. 614, L. 1981; amd. Sec. 28, Ch. 370, L. 1987; amd. Sec. 3, Ch. 349, L. 1991.

Cross-References

County general obligation bonds, Title 7, ch. 7, part 22.

7-34-2132. Hospital district budget. The board of hospital trustees shall annually present their budget to the board of county commissioners at the regular budget meetings as prescribed by law and therewith certify the amount of money necessary and proper for the ensuing year.

History: En. Sec. 9, Ch. 155, L. 1953; amd. Sec. 9, Ch. 257, L. 1969; R.C.M. 1947, 16-4309(part).

Cross-References

County budget law, Title 7, ch. 6, part 23.

7-34-2133. Levy of district taxes — limit on mill levy. (1) The board of county commissioners must, annually at the time of levying county taxes, fix and levy a tax (in mills) upon all property within said hospital district clearly sufficient to raise the amount certified by the board of hospital trustees under 7-34-2132.

(2) The tax so levied for all hospital district purposes other than payment of bonded indebtedness shall not in any year exceed 3 mills on each dollar of taxable valuation of property within said district.

History: En. Sec. 9, Ch. 155, L. 1953; amd. Sec. 9, Ch. 257, L. 1969; R.C.M. 1947, 16-4309(part).

Cross-References

Responsibility of County Commissioners to fix tax rate and levy tax, 7-6-2502.

7-34-2134. Special additional mill levy authorized. If the maximum levy of 3 mills on each dollar of taxable valuation of property within the hospital district is inadequate to raise the amount of money certified as necessary and proper by the board of hospital trustees as provided in 7-34-2132, the board of county commissioners may make an additional levy for 2 years upon the taxable property within said hospital district sufficient to raise the amount certified by the board of hospital trustees.

History: En. 16-4309.1 by Sec. 1, Ch. 132, L. 1974; R.C.M. 1947, 16-4309.1(1); amd. Sec. 1, Ch. 554, L. 1979; amd. Sec. 2, Ch. 625, L. 1983.

Cross-References

County — may exceed maximum mill levy — election required, 7-6-2531.

7-34-2135. Election required to impose special additional mill levy. (1) Before each additional levy provided for in 7-34-2134 may be made, the question shall be submitted to a vote of the people at the next primary election held in an even-numbered year or on the next regular school election day held in accordance with 20-3-304 or by mail ballot election as provided by Title 13, chapter 19, in the following form:

"Shall there be an additional levy of (specify number) mills upon the taxable property of the (specify hospital district) for 2 years necessary to raise the sum of (specify the approximate amount to be raised by the additional tax levy) for the purpose of (specify purpose for which the additional levy is made)?

☐ FOR an additional levy to raise the sum of (state the approximate amount to be raised by the additional tax levy), and being (give number) mills.

☐ AGAINST an additional tax levy to raise the sum of (state the approximate amount to be raised by the additional tax levy), and being (give number) mills."

(2) Notice of the election, clearly stating the amount and the purpose of the additional levy, must be given and the election held and conducted and the returns made in all respects in the manner prescribed by law with regard to the submission of questions to the electors under the general election laws.

History: En. 16-4309.1, 16-4309.2 by Secs. 1, 2, Ch. 132, L. 1974; R.C.M. 1947, 16-4309.1(2), 16-4309.2; amd. Sec. 2, Ch. 554, L. 1979; amd. Sec. 1, Ch. 608, L. 1985.

Cross-References

County — may exceed maximum mill levy — election required, 7-6-2531.

Notice of election on question of additional mill levy, 7-6-2533.

7-34-2136. Approval required to impose special additional mill levy. (1) A majority of the votes cast shall be necessary to permit the additional levy provided for in 7-34-2134, which shall be collected in the same manner as other hospital district taxes.

(2) If the calculated percentage of qualified electors voting in the election is less than 30%, the additional levy shall be deemed to have been rejected.

History: En. 16-4309.1 by Sec. 1, Ch. 132, L. 1974; R.C.M. 1947, 16-4309.1(3), (4).

Cross-References

Conduct of election, 7-6-2535.

7-34-2137. Collection of taxes and disposition of funds. (1) The procedures for the collection of the tax shall be in accordance with the existing laws of Montana.

(2) The funds collected under the tax levy shall be held by the county treasurer, who shall be, ex officio, the treasurer for the hospital district, and such treasurer shall keep a detailed account of all tax money paid into the fund, of all other money from any source received by the district, and of all payments

and disbursements from the fund. Funds shall be paid out on warrants issued by direction of the board of trustees, signed by the majority of its membership.

History: En. Sec. 10, Ch. 155, L. 1953; amd. Sec. 2, Ch. 97, L. 1955; amd. Sec. 10, Ch. 257, L. 1969; R.C.M. 1947, 16-4310.

Cross-References

Use of proceeds from additional mill levy, 7-6-2536.

7-34-2138. Hospital district capital replacement fund. (1) A hospital district may establish a capital replacement fund. The fund may be used only for the replacement of property, plant facilities, or equipment. The cost of such capital equipment must exceed $5,000 and have a life expectancy of 5 years or more.

(2) A capital replacement fund established under subsection (1) may not exceed 10% of the total value of the hospital's property, plant facilities, and equipment at the end of a fiscal year.

History: En. Sec. 1, Ch. 64, L. 1987.

7-34-2139 through 7-34-2150 reserved.

7-34-2151. Annexation of land to hospital district. The boundaries of any such public hospital district may be altered and outlying districts may be annexed from territory contiguous thereto in the following manner.

History: En. Sec. 12, Ch. 155, L. 1953; amd. Sec. 12, Ch. 257, L. 1969; R.C.M. 1947, 16-4312(part).

Cross-References

Special improvement districts — extension of proposed district, 7-12-4109.

7-34-2152. Petition to annex land. A petition signed by 10% or more of the freeholders within the territory proposed to be annexed or by a majority of such freeholders if there are less than 25 residing within the area proposed to be annexed, designating the boundaries of such contiguous territory proposed to be annexed and asking that it be annexed to said public hospital district, shall be presented to the board of county commissioners of the county in which said public hospital district is situated.

History: En. Sec. 12, Ch. 155, L. 1953; amd. Sec. 12, Ch. 257, L. 1969; R.C.M. 1947, 16-4312(part).

7-34-2153. Hearing on petition for annexation — notice. (1) At the first regular meeting after the presentation of said petition, said board of county commissioners shall cause notice of said petition to be published as provided in 7-1-2121 prior to the date fixed by said board for the hearing of said petition, which date shall be not less than 4 weeks after the filing of such petition.

(2) Upon the date fixed for such hearing or continuance thereof, said board shall take up and consider said petition and any objections which may be filed to the inclusion of any additional area or territory in said district.

History: En. Sec. 12, Ch. 155, L. 1953; amd. Sec. 12, Ch. 257, L. 1969; R.C.M. 1947, 16-4312(part); amd. Sec. 35, Ch. 349, L. 1985.

Cross-References

Notice and opportunity to be heard, Title 2, ch. 3, part 1.

7-34-2154. Decision on annexation petition. Said board of county commissioners shall have the power, by order entered on its minutes:

(1) to grant said petition either in whole or in part;

(2) to alter the boundaries of said public hospital district; and

(3) to annex thereto all or such portion of said area or territory described in said petition as will be benefited thereby.

History: En. Sec. 12, Ch. 155, L. 1953; amd. Sec. 12, Ch. 257, L. 1969; R.C.M. 1947, 16-4312(part).

Cross-References

General authority of County Commissioners, 7-5-2101.

7-34-2155. Effect of annexation. The annexed territory shall become and be a part of such public hospital district on the date fixed in the order of annexation and shall be subject to the taxes authorized by this part, including taxes for any preexisting indebtedness, together with the preexisting area of said district; and such taxes shall be uniform for the whole area and territory in the district as enlarged.

History: En. Sec. 12, Ch. 155, L. 1953; amd. Sec. 12, Ch. 257, L. 1969; R.C.M. 1947, 16-4312(part).

7-34-2156. Withdrawal of land from hospital district. (1) Any portion of a public hospital district may be withdrawn therefrom, as provided in 7-34-2156 through 7-34-2160, upon receipt of a petition signed by 51% or more of the taxpayers residing in and owning property within the area desired to be withdrawn from any public hospital district, on the grounds that such area will not be benefited by remaining in said district.

(2) No petition for withdrawal shall be entertained or acted upon by the board unless the same is filed before December 31 of the preceding year.

History: En. Sec. 11, Ch. 155, L. 1953; amd. Sec. 11, Ch. 257, L. 1969; amd. Sec. 24, Ch. 388, L. 1975; R.C.M. 1947, 16-4311(part).

7-34-2157. Hearing on petition for withdrawal — notice. (1) The board of county commissioners shall, upon the filing of such a petition, fix a time for the hearing of such withdrawal petition, which time shall not be more than 4 weeks after the receipt thereof.

(2) Any interested person may appear at said hearing and present objections to the withdrawal of said portion from said district.

(3) The board shall publish a notice of such hearing as provided in 7-1-2121.

History: En. Sec. 11, Ch. 155, L. 1953; amd. Sec. 11, Ch. 257, L. 1969; amd. Sec. 24, Ch. 388, L. 1975; R.C.M. 1947, 16-4311(part); amd. Sec. 36, Ch. 349, L. 1985.

Cross-References

Notice and opportunity to be heard, Title 2, ch. 3, part 1.

7-34-2158. Decision on withdrawal petition — appeal. (1) The board shall consider the petition and all objections thereto, pass upon the merits thereof, and make its order in accordance therewith.

(2) Such order is subject to review by the district court of the county, and appeal may be taken from the final judgment of such district court to the supreme court of Montana.

History: En. Sec. 11, Ch. 155, L. 1953; amd. Sec. 11, Ch. 257, L. 1969; amd. Sec. 24, Ch. 388, L. 1975; R.C.M. 1947, 16-4311(part).

7-34-2159. Effective date of withdrawal. Any withdrawal shall be effective as of January 1 following the issuance of the withdrawal order.

History: En. Sec. 11, Ch. 155, L. 1953; amd. Sec. 11, Ch. 257, L. 1969; amd. Sec. 24, Ch. 388, L. 1975; R.C.M. 1947, 16-4311(part).

7-34-2160. Withdrawing property subject to existing indebtedness. All taxable property within the withdrawn area shall remain subject to taxation for any bonded indebtedness of the hospital district existing as of the effective date of the withdrawal to the same extent as it would have been subject if not withdrawn.

History: En. Sec. 11, Ch. 155, L. 1953; amd. Sec. 11, Ch. 257, L. 1969; amd. Sec. 24, Ch. 388, L. 1975; R.C.M. 1947, 16-4311(part).

7-34-2161. Dissolution of hospital district. At any time after 5 years from the date any public hospital district is created, such district may be dissolved upon presentation to the board of county commissioners of a petition signed by at least 51% of the owners of property lying within such district as shown by the last-completed assessment roll.

History: En. Sec. 13, Ch. 155, L. 1953; amd. Sec. 13, Ch. 257, L. 1969; R.C.M. 1947, 16-4313(part).

7-34-2162. Hearing on petition for dissolution — notice. Upon the filing of such petition, the board of county commissioners shall set a time for hearing the same and shall cause notice thereof to be posted in at least three separate public places within said district for at least 2 weeks prior to the hearing. The notice shall also be published as provided in 7-1-2121.

History: En. Sec. 13, Ch. 155, L. 1953; amd. Sec. 13, Ch. 257, L. 1969; R.C.M. 1947, 16-4313(part); amd. Sec. 37, Ch. 349, L. 1985.

Cross-References

Notice and opportunity to be heard, Title 2, ch. 3, part 1.

7-34-2163. Decision on dissolution petition. The commissioners shall enter upon their minutes an order dissolving such district if, upon the hearing provided for in 7-34-2162, the commissioners find:

(1) such petition to be sufficient;

(2) that the district is not indebted in any amount beyond funds immediately available to extinguish all of its debts and obligations; and

(3) that there is good reason for the dissolution of such district.

History: En. Sec. 13, Ch. 155, L. 1953; amd. Sec. 13, Ch. 257, L. 1969; R.C.M. 1947, 16-4313(part).

Cross-References

General authority of County Commissioners, 7-5-2101.

7-34-2164. Effect of dissolution. The order of dissolution shall be filed of record, and the dissolution shall be effective for all purposes 6 months after the date of filing said order of dissolution, provided that at or before such time the board of trustees of said district certifies to the board of county commissioners that all debts and obligations of the district have been paid, discharged, or irrevocably settled, together with legal proof thereof. Any assets of the district remaining after all debts and obligations of the district have been paid, discharged, or irrevocably settled shall become the property of the county.

History: **En. Sec. 13, Ch. 155, L. 1953; amd. Sec. 13, Ch. 257, L. 1969; R.C.M. 1947, 16-4313(part).**

Cross-References

Role and duties of County Clerk, 7-4-2611.

Part 22
County Hospital Services

Part Cross-References

Hospitals and related facilities, Title 50, ch. 5.

7-34-2201. Erection and management of county health care facilities — definition — provision of health care services. (1) The board of county commissioners has jurisdiction and power, under the limitations and restrictions prescribed by law, to erect, furnish, equip, expand, improve, and maintain health care facilities and to provide health care services in those facilities as permitted by law.

(2) The board of county commissioners of a county that has or may acquire title to a site and building or buildings suitable for county health care purposes has jurisdiction and power, under the limitations and restrictions prescribed by law, to erect, furnish, equip, expand, improve, maintain, and operate the building or buildings for health care purposes as provided by this section.

(3) As used in parts 21, 23, 24, and 25 and this part, unless the context clearly requires otherwise, the term "health care facility" means a hospital, a medical assistance facility, an ambulatory surgical facility, a hospice, a kidney treatment center, an outpatient facility, a public health center, a rehabilitation facility, a long-term care facility, or an adult day-care center, as defined in 50-5-101, or any combination and related medical facilities including offices for physicians or other health care professionals providing outpatient, rehabilitative, emergency, nursing, or preventive care.

History: **En. Subd. 9, Sec. 1, Ch. 100, L. 1931; re-en. Sec. 4465.8, R.C.M. 1935; amd. Sec. 1, Ch. 56, L. 1947; amd. Secs. 1, 2, Ch. 238, L. 1947; amd. Secs. 1, 2, Ch. 5, L. 1949; amd. Sec. 1, Ch. 76, L. 1957; amd. Sec. 1, Ch. 150, L. 1959; amd. Sec. 1, Ch. 130, L. 1973; R.C.M. 1947, 16-1008A(part); amd. Sec. 4, Ch. 520, L. 1995.**

Compiler's Comments

1995 Amendment: Chapter 520 in (1) and (2) substituted references to health care facilities, services, and purposes for references to hospital facilities, services, and purposes; inserted (3) defining health care facility; and made minor changes in style. Amendment effective April 25, 1995.

Cross-References

Hospitals — construction, expansion, or alteration, Title 50, ch. 5, part 3.

7-34-2202. Health care facilities commission. The board of county commissioners may create a commission for the management of health care facilities, as provided in 7-8-2103.

History: **En. Subd. 9, Sec. 1, Ch. 100, L. 1931; re-en. Sec. 4465.8, R.C.M. 1935; amd. Sec. 1, Ch. 56, L. 1947; amd. Secs. 1, 2, Ch. 238, L. 1947; amd. Secs. 1, 2, Ch. 5, L. 1949; amd. Sec. 1, Ch. 76, L. 1957; amd. Sec. 1, Ch. 150, L. 1959; amd. Sec. 1, Ch. 130, L. 1973; R.C.M. 1947, 16-1008A(part); amd. Sec. 5, Ch. 520, L. 1995.**

Compiler's Comments

1995 Amendment: Chapter 520 substituted "health care facilities" for "hospitals"; and made minor changes in style. Amendment effective April 25, 1995.

7-34-2203. Provision of health care services. A county health care facility may be used to provide health care services.

History: En. Subd. 9, Sec. 1, Ch. 100, L. 1931; re-en. Sec. 4465.8, R.C.M. 1935; amd. Sec. 1, Ch. 56, L. 1947; amd. Secs. 1, 2, Ch. 238, L. 1947; amd. Secs. 1, 2, Ch. 5, L. 1949; amd. Sec. 1, Ch. 76, L. 1957; amd. Sec. 1, Ch. 150, L. 1959; amd. Sec. 1, Ch. 130, L. 1973; R.C.M. 1947, 16-1008A(part); amd. Sec. 6, Ch. 520, L. 1995.

Compiler's Comments

1995 Amendment: Chapter 520 substituted "health care facility may be used to provide health care services" for "hospital so erected and furnished may be used for the hospitalization of the indigent sick of the county"; and deleted second sentence allowing a hospital to be used for the nonindigent sick for a reasonable fee if no indigent sick would be deprived of care. Amendment effective April 25, 1995.

Cross-References

Discrimination prohibited, 50-5-105.

Medical assistance — medicaid, Title 53, ch. 6, part 1.

7-34-2204. Lease of county property for health care purposes. (1) The board of county commissioners has jurisdiction and power, under the limitations and restrictions prescribed by law, to lease county buildings, equipment, furniture, and fixtures for health care facility purposes, with full power of lessor except as limited in this section, upon the terms and conditions as the board may decide upon. The rentals received under the lease or leases must be paid into the general fund of the county, or if the lease is of a long-term care facility or portion of a long-term care facility, the rentals must be paid into the county poor fund, except as provided in subsection (2)(a).

(2) (a) A lease may not be made for a period longer than 5 years except in a case in which bonds are to be or have been issued in accordance with 7-34-2411, in which case the lease may extend until the maturity date of the bonds sold and in which case bond payments may be made from lease receipts.

(b) The board may not enter into a lease without first having advertised in a newspaper published in the county at least once a week for 5 weeks that the health care facility or designated portion of a health care facility, including equipment if applicable, is for lease for health care purposes.

History: En. Subd. 30, Sec. 1, Ch. 100, L. 1931; re-en. Sec. 4465.29, R.C.M. 1935; amd. Sec. 1, Ch. 80, L. 1977; R.C.M. 1947, 16-1032; amd. Sec. 7, Ch. 520, L. 1995.

Compiler's Comments

1995 Amendment: Chapter 520 in (1), near middle of first sentence, substituted "health care facility" for "hospital" and at end of second sentence inserted "or if the lease is of a long-term care facility or portion of a long-term care facility, the rentals must be paid into the county poor fund, except as provided in subsection (2)(a)"; in (2)(a) substituted "in which bonds are to be or have been issued" for "of financing bonds", after "7-34-2411" deleted "through 7-34-2418", and substituted "extend until" for "terminate at"; in (2)(b) substituted "health care facility or designated portion of a health care facility, including equipment if applicable" for "buildings and equipment" and substituted "health care" for "hospital"; and made minor changes in style. Amendment effective April 25, 1995.

Cross-References

Authorization to lease county property, 7-8-2231.

Part 23

County Boarding and Nursing Homes for the Aged

Part Cross-References

Board of Nursing Home Administrators, 2-15-1845.

Nursing home administrators, Title 37, ch. 9.

Montana Older Americans Act, Title 52, ch. 3, part 5.

Community-based nursing homes — Montana Center for the Aged, Title 53, ch. 21, part 4.

7-34-2301. Construction and operation of county boarding home authorized. The board of county commissioners may erect, furnish, equip, expand, improve, maintain, and operate a boarding home for the aged that does not constitute a health care facility, subject to any applicable standards established by the department of public health and human services. A boarding home may be located adjacent to or in a building containing a health care facility and may be operated in conjunction with the health care facility.

History: En. Sec. 1, Ch. 88, L. 1963; amd. Sec. 106, Ch. 349, L. 1974; R.C.M. 1947, 16-1037; amd. Sec. 36, Ch. 418, L. 1995; amd. Sec. 8, Ch. 520, L. 1995; amd. Sec. 34, Ch. 546, L. 1995.

Compiler's Comments

1995 Amendments: Chapter 418 at end of first sentence substituted "department of public health" for "department of health and environmental sciences". Amendment effective July 1, 1995.

Chapter 520 in first sentence, after "erect", inserted "furnish", after "equip" inserted "expand, improve", after "home" deleted "or nursing home", and after "for the aged" inserted "that does not constitute a health care facility"; inserted second sentence providing that a boarding home may be located near or in a building containing a health care facility and operated in conjunction with it; and made minor changes in style. Amendment effective April 25, 1995.

Chapter 546 at end of first sentence substituted "department of public health and human services" for "department of health and environmental sciences". Amendment effective July 1, 1995.

Cross-References

Erection and maintenance of county buildings, 7-8-2102.

7-34-2302. Repealed. Sec. 20, Ch. 520, L. 1995.

History: En. Sec. 2, Ch. 88, L. 1963; R.C.M. 1947, 16-1038.

7-34-2303. Lease of county property for boarding home. (1) The board of county commissioners may lease county buildings, equipment, furniture, and fixtures for the purpose of operation of a boarding home for aged persons, with full power of lessor except as limited in this part, upon terms and conditions as the board may decide upon.

(2) The rentals received under the lease or leases must be paid into the poor fund of the county, or if bonds have been issued under 7-34-2411 to finance or refinance the costs of a boarding home, the rentals must be applied, as necessary, to the payment of the principal of or interest on the bonds.

(3) (a) Except as provided in subsection (3)(b), the lease may not be made for a period longer than 5 years.

(b) A lease may be made for a period longer than 5 years when bonds are to be or have been issued under 7-34-2411, in which case the lease may extend until the maturity date of the bonds.

(4) The board may not enter into a lease unless it has advertised in a newspaper published in the county at least once a week for 5 weeks that

specified buildings and equipment are for lease for the purpose of a boarding home for aged persons.

History: En. Sec. 1, Ch. 87, L. 1963; R.C.M. 1947, 16-1036; amd. Sec. 1, Ch. 245, L. 1989; amd. Sec. 9, Ch. 520, L. 1995.

Compiler's Comments

1995 Amendment: Chapter 520 in (1) and (4), after "boarding home", deleted "or nursing home"; in (2) inserted "or if bonds have been issued under 7-34-2411 to finance or refinance the costs of a boarding home, the rentals must be applied, as necessary, to the payment of the principal of or interest on the bonds"; in (3)(b) substituted current text for former text that changed term of lease; and made minor changes in style. Amendment effective April 25, 1995.

Cross-References

Authorization to lease county property, 7-8-2231.

Part 24

Financing of County-Operated Hospitals and Nursing Homes

Part Cross-References

County tax levy for nursing homes and hospital facilities, 7-6-2512.

Montana Older Americans Act, Title 52, ch. 3, part 5.

7-34-2401. Depletion allowance reserve fund authorized. The governing body of a county may establish a depletion allowance reserve fund for the replacement and acquisition of property and equipment for county-operated health care facilities created under 7-8-2102, 7-34-2201, and 7-34-2502.

History: En. 16-1042 by Sec. 1, Ch. 365, L. 1975; R.C.M. 1947, 16-1042; amd. Sec. 10, Ch. 520, L. 1995.

Compiler's Comments

1995 Amendment: Chapter 520 substituted "health care facilities" for "hospitals and nursing homes"; deleted reference to 7-34-2301; and made minor changes in style. Amendment effective April 25, 1995.

7-34-2402. Sources of money for depletion allowance reserve fund. Money for the depletion allowance reserve fund may be derived from:

(1) public and private grants;

(2) money collected by the health care facility for which the fund is created, from or for indigent patients or residents, that is in excess of the expenses incurred for the care of the patients or residents.

History: En. 16-1043 by Sec. 2, Ch. 365, L. 1975; R.C.M. 1947, 16-1043(part); amd. Sec. 11, Ch. 520, L. 1995.

Compiler's Comments

1995 Amendment: Chapter 520 in (2) substituted "health care facility" for "hospital or nursing home" and inserted two references to residents; and made minor changes in style. Amendment effective April 25, 1995.

7-34-2403. Accumulation of reserve fund. The depletion allowance reserve fund may accumulate at the discretion of the governing body.

History: En. 16-1043 by Sec. 2, Ch. 365, L. 1975; R.C.M. 1947, 16-1043(2).

7-34-2404. Investment of reserve fund. The money held in the depletion allowance reserve fund may be invested as provided by law. All interest earned on the investments is credited to the depletion allowance reserve fund.

History: En. 16-1044 by Sec. 3, Ch. 365, L. 1975; R.C.M. 1947, 16-1044.

7-34-2405 through 7-34-2410 reserved.

7-34-2411. County health care facility bonds authorized. (1) Notwithstanding any limitation imposed by law upon the bonded indebtedness of a county, a county acquiring, erecting, furnishing, equipping, expanding, improving, or maintaining a health care facility under 7-8-2102 or 7-34-2201 or a boarding home under 7-34-2301 may borrow money and issue its bonds for a health care facility or a boarding home, including refunding bonds, in the form and upon the terms as it may determine, payable out of any revenue of the facility or boarding home, respectively, including revenue derived from:

(a) fees and payments for health care or boarding home services;

(b) taxes levied under 7-6-2512 or 7-34-2417 for a health care facility;

(c) grants or contributions from the federal government; or

(d) any other sources.

(2) For the security of the bonds, the county may by resolution make and enter into any covenant, agreement, or indenture and exercise any additional powers authorized to be made, entered into, or exercised by a county, including those authorized in 7-6-2512 and this part. The sums required to pay principal and interest and to create and maintain a reserve for the bonds may be made payable from any and all revenue of the health care facility or boarding home prior to the payment of current costs of operation and maintenance of the facilities.

History: En. 16-1045 by Sec. 1, Ch. 511, L. 1975; amd. Sec. 1, Ch. 513, L. 1977; R.C.M. 1947, 16-1045(part); amd. Sec. 12, Ch. 520, L. 1995.

Compiler's Comments

1995 Amendment: Chapter 520 in (1), in introductory clause, substituted "acquiring, erecting, furnishing, equipping, expanding, improving, or maintaining a health care facility" for "constructing a hospital or nursing home", after "7-34-2201" inserted "or a boarding home under 7-34-2301", and near end, after "facility", inserted "or boarding home, respectively"; in (1)(a) substituted "health care or boarding" for "hospital or nursing"; in (1)(b) inserted references to 7-6-2512 and to health care facility; in (2), at end of first sentence, inserted "including those authorized in 7-6-2512 and this part" and substituted "revenue of the health care facility or boarding home" for "revenues referred to in 7-34-2411 through 7-34-2418"; and made minor changes in style. Amendment effective April 25, 1995.

Cross-References

Purposes for which general obligation bonds of a county may be issued, 7-7-2201.

Authority to issue refunding general obligation bonds, 7-7-2301.

7-34-2412. Repealed. Sec. 20, Ch. 520, L. 1995.

History: En. 16-1047 by Sec. 3, Ch. 511, L. 1975; amd. Sec. 2, Ch. 513, L. 1977; R.C.M. 1947, 16-1047.

7-34-2413. Limitations on bond authority. The bonds may be issued by resolution or resolutions of the county governing body without any limitation of amount except as follows:

(1) no such bonds may be issued at any time if the total amount of principal and interest to become due in any year on such bonds and on any then-outstanding bonds for which revenues from the same source or sources are pledged exceeds the amount of such revenues to be received in that year as estimated in the resolution authorizing the issuance of the bonds; and

(2) the county shall be obligated to take all action necessary and possible to impose, maintain, and collect rates, charges, rentals, and taxes, if any are pledged, sufficient to make the revenues from the pledged source or sources in such year at least equal to the amount of such principal and interest due in that year.

History: En. 16-1045 by Sec. 1, Ch. 511, L. 1975; amd. Sec. 1, Ch. 513, L. 1977; R.C.M. 1947, 16-1045(part).

Cross-References

Limitation on amount of bonded indebtedness, 7-7-2203.

7-34-2414. Election required on question of issuance of bonds. (1) A county may not issue bonds to which all or a portion of the taxes levied under 7-6-2512 are pledged or to which the general tax authorized under 7-34-2418 is pledged until the question of approval of the issuance of the bonds has been submitted to the registered electors of the county at a general election or a special election called for that purpose by the governing body of the county and the majority of the electors voting on the question have voted in favor of issuing the bonds. A special election must be conducted in conjunction with a regular or primary election. The notice and conduct of the election must be governed, to the extent applicable, by the laws governing the election on county general obligation bonds in chapter 7, part 22.

(2) If less than a majority of the electors voting on the issuance of the bonds vote in favor of the issuance of the bonds, the county may not issue the bonds under 7-34-2411.

History: En. 16-1045 by Sec. 1, Ch. 511, L. 1975; amd. Sec. 1, Ch. 513, L. 1977; R.C.M. 1947, 16-1045(2)(c); amd. Sec. 349, Ch. 571, L. 1979; amd. Sec. 47, Ch. 575, L. 1981; amd. Sec. 63, Ch. 387, L. 1995; amd. Sec. 13, Ch. 520, L. 1995.

Compiler's Comments

1995 Amendments — Composite Section: Chapter 387 in (1) inserted second sentence that read: "A special election must be conducted in conjunction with a regular or primary election"; and made minor changes in style.

Chapter 520 in (1), near beginning, inserted "to which all or a portion of the taxes levied under 7-6-2512 are pledged or to which the general tax authorized under 7-34-2418 is pledged"; in (2), at end, deleted "through 7-34-2418"; and made minor changes in style. Amendment effective April 25, 1995.

Style changes in the chapters were slightly different. In each case, the codifier chose the most appropriate.

Cross-References

Petition and election required for issuance of certain bonds, 7-7-2223.

7-34-2415. Details of bonds. (1) The bonds may be sold at public or private sale and bear interest at a rate or rates as provided in 17-5-102. The bonds may be for a 40-year period.

(2) Except as otherwise provided in 7-34-2411 and 7-34-2413 through 7-34-2418, any bonds issued pursuant to 7-34-2411 and 7-34-2413 through 7-34-2418 by a county must be payable as to principal and interest solely from revenue of the county and must state on their face the applicable limitations or restrictions regarding the source or sources from which the principal and interest are payable.

History: En. 16-1045 by Sec. 1, Ch. 511, L. 1975; amd. Sec. 1, Ch. 513, L. 1977; R.C.M. 1947, 16-1045(part); amd. Sec. 9, Ch. 500, L. 1981; amd. Sec. 1, Ch. 11, L. 1983; amd. Sec. 29, Ch. 370, L. 1987; amd. Sec. 14, Ch. 520, L. 1995.

Compiler's Comments

1995 Amendment: Chapter 520 in (2) inserted two references to 7-34-2413; and made minor changes in style. Amendment effective April 25, 1995.

Cross-References

County general obligation bonds, Title 7, ch. 7, part 22.

7-34-2416. Tax-exempt status of bonds. Bonds issued by a county pursuant to the provisions of 7-34-2411 and 7-34-2413 through 7-34-2418 are declared to be issued for an essential public and governmental purpose by a political subdivision within the meaning of 15-30-111(2)(a).

History: **En. 16-1045 by Sec. 1, Ch. 511, L. 1975; amd. Sec. 1, Ch. 513, L. 1977; R.C.M. 1947, 16-1045(part); amd. Sec. 15, Ch. 520, L. 1995.**

Compiler's Comments

1995 Amendment: Chapter 520 inserted reference to 7-34-2413. Amendment effective April 25, 1995.

7-34-2417. Special tax levy authorized. In the event the bonds are not paid or are not expected to be paid from ordinary revenue of the facility, a county that has issued bonds under 7-34-2411 for a health care facility may levy taxes on all taxable property within the county in the manner provided for public hospital districts under 7-34-2133, 7-34-2134, 7-34-2135(1), and 7-34-2136, up to a maximum of 3 mills not submitted to a vote of the people and 3 additional mills approved by a vote of the people.

History: **En. 16-1046 by Sec. 2, Ch. 511, L. 1975; R.C.M. 1947, 16-1046; amd. Sec. 3, Ch. 625, L. 1983; amd. Sec. 16, Ch. 520, L. 1995.**

Compiler's Comments

1995 Amendment: Chapter 520 near beginning substituted "are not paid or are not expected to be paid" for "become delinquent or cannot be paid" and after "7-34-2411" inserted "for a health care facility"; and made minor changes in style. Amendment effective April 25, 1995.

Cross-References

County — may exceed maximum mill levy — election required, 7-6-2531.

7-34-2418. General tax to support bonds authorized. (1) (a) The governing body of a county may, with respect to bonds issued by the county pursuant to 7-34-2411 for a health care facility and if approved by the voters as provided in 7-34-2414, by resolution covenant that:

(i) in the event that at any time all revenue, including taxes, appropriated and collected for the bonds is insufficient to pay principal or interest then due, it will levy a general tax upon all of the taxable property in the county for the payment of the deficiency; and

(ii) at any time a deficiency is likely to occur within 1 year for the payment of principal and interest due on the bonds, it will levy a general tax upon all the taxable property in the county for the payment of the deficiency.

(b) The resolution must state the principal amount and purpose of the bonds and the substance of the covenant respecting deficiencies.

(2) The taxes are not subject to any limitation of rate or amount applicable to other county taxes but are limited to a rate estimated to be sufficient to produce the amount of the deficiency.

(3) In the event that the health care facility for which bonds are issued pursuant to 7-34-2411 is a joint institution, as provided in part 25, and the deficiency tax levy is authorized under 7-34-2417, the counties may apportion the obligation to levy taxes for the payment of or in anticipation of a deficiency in the revenues appropriated for the bonds in the manner as the counties shall determine.

History: **En. 16-1045 by Sec. 1, Ch. 511, L. 1975; amd. Sec. 1, Ch. 513, L. 1977; R.C.M. 1947, 16-1045(4); amd. Sec. 17, Ch. 520, L. 1995.**

Compiler's Comments

1995 Amendment: Chapter 520 in introductory clause to (1)(a) substituted "for a health care facility and if approved by the voters as provided in 7-34-2414" for "through 7-34-2418"; in (3) substituted "that the health care facility for which bonds are issued pursuant to 7-34-2411 is a joint institution, as provided in part 25, and the deficiency tax levy is authorized under 7-34-2417" for "more than one county is included in an authority issuing bonds pursuant to 7-34-2411 through 7-34-2418"; and made minor changes in style. Amendment effective April 25, 1995.

Cross-References

Authorization for county mill levy, 7-6-2501.

Part 25

Multicounty Operation of Hospitals and Nursing Homes

Part Cross-References

County tax levy for nursing homes and hospital facilities, 7-6-2512.

Nursing home administrators, Title 37, ch. 9.

7-34-2501. Definitions. As used in this part, the following definitions apply:

(1) "Contract" means the agreement entered into by two or more counties for the purpose of creating a joint institution.

(2) "Joint institution" means a county health care facility or boarding home for the aged constructed, purchased, leased, equipped, and operated by two or more counties pursuant to the terms of the contract creating it.

History: En. Sec. 1, Ch. 100, L. 1965; R.C.M. 1947, 16-1039; amd. Sec. 18, Ch. 520, L. 1995.

Compiler's Comments

1995 Amendment: Chapter 520 in definition of joint institution substituted "health care facility or boarding home" for "hospital or nursing home". Amendment effective April 25, 1995.

7-34-2502. Joint institutions authorized. Two or more counties may by contract create a joint institution which will be operated and financed by the contracting counties.

History: En. Sec. 2, Ch. 100, L. 1965; R.C.M. 1947, 16-1040.

Cross-References

Interlocal agreements, Title 7, ch. 11, part 1.

7-34-2503. Contract for joint institution. The contract creating the joint institution shall provide:

(1) the total proposed expenditure for the construction, purchase, or lease of the joint institution and the proposed cost of equipping and operating the joint institution;

(2) for the management of the joint institution by a method which will provide that each contracting county shall be represented and have an active part in the management of the joint institution;

(3) that the management of the joint institution shall have such powers as will be necessary to accomplish the purpose of this part.

History: En. Sec. 3, Ch. 100, L. 1965; R.C.M. 1947, 16-1041(part).

Cross-References

County contracts, Title 7, ch. 5, part 23.

7-34-2504. Division of costs among counties. The total cost of the joint institution shall be divided between the contracting counties in such manner as they shall determine.

History: En. Sec. 3, Ch. 100, L. 1965; R.C.M. 1947, 16-1041(part).

Cross-References

Authorization to appropriate funds for purpose of interlocal agreement, 7-11-108.

Parts 26 through 40 reserved

Part 41
Municipal Hospital Services

Part Cross-References

Hospitals and related facilities, Title 50, ch. 5.

7-34-4101. Detention hospitals. In case of necessity, the city or town council has power to establish, at a suitable place within or without the limits of the city or town, a hospital to prevent the spread of smallpox or other contagious or infectious diseases, to regulate the control thereof, to do all other acts which may be necessary for the promotion of health, and to prevent the spread of infectious or contagious diseases within the city or town.

History: En. Subd. 45, Sec. 5039, R.C.M. 1921; amd. Sec. 1, Ch. 115, L. 1925; amd. Sec. 1, Ch. 20, L. 1927; re-en. Sec. 5039.44, R.C.M. 1935; R.C.M. 1947, 11-947.

Cross-References

Powers and duties of local health boards, 50-2-116.

CHAPTER 35

CEMETERY SERVICES

Part 1 — General Provisions Applicable to Local Governments

7-35-101. Joint conduct of cemeteries.
7-35-102. Use of county lands for cemeteries.

Parts 2 through 20 reserved

Part 21 — Cemetery Districts

7-35-2101. Petition to create cemetery district.
7-35-2102. Notice of hearing on creation of district.
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7-35-2117 through 7-35-2120 reserved.
7-35-2121. District budget — report.

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7-35-2124. Compliance with state laws.
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7-35-2131. Establishment and maintenance of permanent care and improvement fund.
7-35-2132. Application for appointment of trustees of fund.
7-35-2133. Appointment of trustees of fund.
7-35-2134. Use of bank as trustee.
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7-35-2136. Vacancies.
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7-35-2138. Secretary for trustees of fund.
7-35-2139. Bond requirements for trustees of fund.
7-35-2140. Effect of failure to renew bond.
7-35-2141. Reduction of bond by deposit of money and securities.
7-35-2142. Effect of failure of district to make application for trustees or of disability of all members of board of trustees of fund.
7-35-2143. Recording of instruments of appointment of trustees of fund.
7-35-2144. Vesting of funds in trustees.
7-35-2145. Vesting of powers and duties in new trustees.
7-35-2146. Administration of permanent care and improvement fund.
7-35-2147. Financial management of fund.
7-35-2148. Disposition of fund income.
7-35-2149. Notice to purchasers of cemetery lots of transfers to fund.
7-35-2150. Annual report — availability.

Part 22 — Cemeteries in Counties

7-35-2201. Power of county commissioners to conduct cemeteries.
7-35-2202. Restrictions on burial not to be affected.

Parts 23 through 40 reserved

Part 41 — Cemeteries in Municipalities

7-35-4101. Power of municipalities to establish and maintain cemeteries.
7-35-4102. Vesting of title to cemetery grounds — restrictions on use.
7-35-4103. What constitutes a cemetery.
7-35-4104. Cemeteries on public lands.
7-35-4105. Layout of cemeteries.
7-35-4106. Inhabitants of municipality to own cemetery.
7-35-4107. Jurisdiction and control of cemeteries.
7-35-4108. Powers of authorities having jurisdiction and control of cemeteries.
7-35-4109. Register must be kept.

Chapter Cross-References

Cemetery associations, Title 35, ch. 20.

Part 1

General Provisions Applicable to Local Governments

Part Cross-References

Local governmental approval prior to commencing operations, 35-20-201.

7-35-101. Joint conduct of cemeteries. The board of county commissioners of any county within Montana is hereby given jurisdiction and power to establish and conduct cemeteries jointly with any incorporated city or town in such county and jointly with any incorporated city or town, to acquire and conduct cemeteries already established or conducted by any person, firm, or corporation, including municipal corporations.

History: En. Sec. 1, Ch. 39, L. 1919; re-en. Sec. 4514, R.C.M. 1921; re-en. Sec. 4514, R.C.M. 1935; amd. Sec. 1, Ch. 172, L. 1974; R.C.M. 1947, 9-401(part).

Cross-References

Interlocal agreements, Title 7, ch. 11, part 1.

7-35-102. Use of county lands for cemeteries. (1) The county commissioners of any county in Montana are hereby authorized to convey to the state of Montana or to any city or town in Montana or to the United States of America any tract of county-owned land, not exceeding 1,280 acres, to be used for the establishment and maintenance of a cemetery.

(2) The conveyance is subject to the provisions of 7-8-102.

History: En. Sec. 1, Ch. 139, L. 1935; re-en. Sec. 4487.1, R.C.M. 1935; amd. Sec. 1, Ch, 48, L. 1961; amd. Sec. 1, Ch. 7, L. 1977; R.C.M. 1947, 16-1131(part).

Cross-References

Cemetery associations — authority to acquire land — survey required, 35-20-212.

Parts 2 through 20 reserved

Part 21

Cemetery Districts

Part Cross-References

Cemetery associations, Title 35, ch. 20.

7-35-2101. Petition to create cemetery district. (1) Whenever a petition is presented to the board of county commissioners of the county in which a proposed district is situated, the board shall by resolution fix a time for the hearing of the petition at a regular or special meeting of said board. The petition shall:

(a) be signed by not less than 20% of the citizens who are owners of land located within a proposed cemetery district and whose names appear as such owners of land upon the last-completed assessment roll of the county in which said proposed district is situated; and

(b) definitely describe the boundaries of the proposed district and request that the territory within said boundaries be organized into a public cemetery district.

(2) The time for the hearing may not be less than 2 or more than 5 weeks from the time of presentation of the petition.

History: En. Sec. 2, Ch. 221, L. 1943; amd. Sec. 2, Ch. 16, L. 1945; R.C.M. 1947, 9-202(part).

Cross-References

Notice and opportunity to be heard, Title 2, ch. 3, part 1.

7-35-2102. Notice of hearing on creation of district. (1) The board of county commissioners shall cause notice to be given of the time and place of said hearing by publication as provided in 7-1-2121.

(2) Said notice shall state that any person residing in or owning property within said proposed district or within any existing cemetery district, any part of the territory of which is described in said petition, may appear before said board at the hearing and show cause why the district should not be created or the proposed boundaries changed.

History: En. Sec. 2, Ch. 221, L. 1943; amd. Sec. 2, Ch. 16, L. 1945; R.C.M. 1947, 9-202(part); amd. Sec. 38, Ch. 349, L. 1985.

Cross-References

Requirements for compliance with notice provisions, 2-3-104.

7-35-2103. Hearing on creation of district. At the time fixed for said hearing, the board shall determine whether or not it complies with the requirements hereinbefore set forth and whether or not the notice required herein has been published as required and must hear all competent and relevant testimony offered in support of or in opposition thereto. Said hearing may be adjourned from time to time for the determination of said facts, not to exceed 2 weeks in all.

History: En. Sec. 3, Ch. 221, L. 1943; amd. Sec. 3, Ch. 16, L. 1945; R.C.M. 1947, 9-203.

Cross-References

Notice and opportunity to be heard, Title 2, ch. 3, part 1.

7-35-2104. Establishment of boundaries and call for election. If the board of county commissioners shall determine that the petitioners have complied with the requirements herein set forth and that the required notice has been published, it shall proceed to a final hearing of the matter. Said board shall make such changes in the boundaries of the proposed district as it may deem advisable and shall define and establish such boundaries as described in the petition and shall call an election.

History: En. Sec. 4, Ch. 221, L. 1943; amd. Sec. 4, Ch. 16, L. 1945; R.C.M. 1947, 9-204.

Cross-References

Submission of question to electors, 7-5-136.

7-35-2105. Territory of cemetery district. A cemetery district may contain the entire territory embraced within a county or any portion or subdivision thereof.

History: En. Sec. 1, Ch. 221, L. 1943; amd. Sec. 1, Ch. 16, L. 1945; R.C.M. 1947, 9-201(part).

Cross-References

Cemetery associations — authority to acquire land — survey required, 35-20-212.

7-35-2106. Election details. (1) In its order, the board shall designate whether a special election must be held or whether the matter must be determined at the next general election. If a special election is ordered, the board shall in its order specify the time. A special election must be held in conjunction with a regular or primary election.

(2) The election must be held in all respects, as nearly as practicable, in conformity with the general election laws.

(3) At the election, the ballots must contain the words "Cemetery district — Yes" and "Cemetery district — No".

History: **En. Sec. 5, Ch. 221, L. 1943; amd. Sec. 5, Ch. 16, L. 1945; R.C.M. 1947, 9-205; amd. Sec. 350, Ch. 571, L. 1979; amd. Sec. 64, Ch. 387, L. 1995.**

Compiler's Comments

1995 Amendment: Chapter 387 in (1) inserted third sentence that read: "A special election must be held in conjunction with a regular or primary election"; and made minor changes in style.

Cross-References

Submission of question to electors, 7-5-136.
Election laws, Title 13.

7-35-2107. Organization of district upon favorable vote. In the event that a majority of the votes cast are in favor of the formation of said cemetery district, the board of county commissioners shall proceed with the organization thereof as specified in this part.

History: **En. Sec. 6, Ch. 221, L. 1943; amd. Sec. 6, Ch. 16, L. 1945; R.C.M. 1947, 9-206.**

Cross-References

General authority of County Commissioners, 7-5-2101.

7-35-2108. Government of district by trustees. The cemetery district must be governed and managed by trustees appointed by the board of county commissioners pursuant to the provisions of 7-1-201 through 7-1-203.

History: **En. Sec. 7, Ch. 221, L. 1943; amd. Sec. 7, Ch. 16, L. 1945; amd. Sec. 1, Ch. 7, L. 1975; R.C.M. 1947, 9-207; amd. Sec. 3, Ch. 213, L. 1979; amd. Sec. 23, Ch. 543, L. 1995.**

Compiler's Comments

1995 Amendment: Chapter 543 near middle, after "managed by", deleted "three", at end inserted "pursuant to the provisions of 7-1-201 through 7-1-203", and deleted remainder of former section that read: "The trustees at their first meeting shall adopt bylaws for the government and management of the district.

(2) The trustees may be appointed from the residents of the district for terms of 1, 2, and 3 years, respectively, and until their successors are appointed and qualified. Annually thereafter the board of county commissioners shall appoint one trustee for a term of 3 years or until his successor is appointed and qualified.

(3) Per diem and mileage of the cemetery trustees may be set by resolution of the board of county commissioners"; and made minor changes in style.

Cross-References

Cemetery associations — operations generally — trustees of association, Title 35, ch. 20, part 2.

7-35-2109. Powers of district. In addition to the powers and duties established in the resolution creating a cemetery district, the district may:

(1) maintain a cemetery or cemeteries within the district;

(2) hold title to property by grant, gift, devise, lease, or any other method; and

(3) perform all acts necessary or proper for the carrying out of the purposes of 7-35-2101 through 7-35-2125, including the selling or leasing of burial lots.

History: **En. Sec. 8, Ch. 221, L. 1943; amd. Sec. 8, Ch. 16, L. 1945; R.C.M. 1947, 9-208; amd. Sec. 24, Ch. 543, L. 1995.**

Compiler's Comments

1995 Amendment: Chapter 543 at beginning of introductory clause inserted "In addition to the powers and duties established in the resolution creating a cemetery district"; and made minor changes in style.

Cross-References

Cemetery associations — operations generally, Title 35, ch. 20, part 2.

7-35-2110. Rules. The trustees shall make proper rules for the management of the cemeteries.

History: **En. Sec. 10, Ch. 221, L. 1943; amd. Sec. 10, Ch. 16, L. 1945; R.C.M. 1947, 9-210(part).**

7-35-2111. Petition for withdrawal of land — hearing. (1) Any portion of a public cemetery district may be withdrawn therefrom as provided in this section, and 7-35-2112 on the grounds that such portion will not be benefited by remaining in said district, upon receipt of a petition signed by:

(a) 50 or more freeholders residing in or owning property within the portion desired to be withdrawn by any public cemetery district; or

(b) a majority of such freeholders if there are less than 100 residing within the portion sought to be withdrawn.

(2) The board of county commissioners shall fix a time for the hearing of such withdrawal petition, which shall not be more than 60 days after the receipt thereof.

History: En. Sec. 11, Ch. 221, L. 1943; amd. Sec. 11, Ch. 16, L. 1945; R.C.M. 1947, 9-211(part).

Cross-References

Notice and opportunity to be heard, Title 2, ch. 3, part 1.

General authority of County Commissioners, 7-5-2101.

7-35-2112. Notice of hearing on withdrawal. The board shall, at least 30 days prior to the time so fixed, publish a notice of such hearing for two issues as provided by law.

History: En. Sec. 11, Ch. 221, L. 1943; amd. Sec. 11, Ch. 16, L. 1945; R.C.M. 1947, 9-211(part).

Cross-References

Requirements for compliance with notice provisions, 2-3-104.

7-35-2113. Hearing on withdrawal. Any person interested may appear at said hearing and present objections to the withdrawal of said portion from said district. The board shall consider all objections, pass upon the merits thereof, and make an order in accordance therewith. This order is subject to review by any court of competent jurisdiction.

History: En. Sec. 12, Ch. 221, L. 1943; amd. Sec. 12, Ch. 16, L. 1945; R.C.M. 1947, 9-212.

Cross-References

Opportunity to submit views, 2-3-111.

Enforcement, 2-3-114.

7-35-2114. Petition for alteration of district boundaries. The boundaries of any such public cemetery district may be altered and outlying districts may be annexed thereto in the following manner: a petition shall be presented to the board of county commissioners of the county in which said public cemetery district is situated, designating the boundaries of such contiguous territory proposed to be annexed and asking that it be annexed to said public cemetery district and signed by:

(1) 50 or more freeholders within the territory proposed to be annexed; or

(2) a majority of such freeholders if there are less than 100 residing within the portion proposed to be annexed.

History: En. Sec. 13, Ch. 221, L. 1943; amd. Sec. 13, Ch. 16, L. 1945; R.C.M. 1947, 9-213.

Cross-References

General authority of County Commissioners, 7-5-2101.

Cemetery associations — authority to acquire land — survey required, 35-20-212.

7-35-2115. Notice and hearing on alteration of boundaries. (1) At the first regular meeting after the presentation of said petition, said board of county commissioners shall cause notice of said petition to be published as provided in 7-1-2121.

(2) Upon the date fixed for such hearing or continuance thereof, said board shall take up and consider said petition and any objections which may be filed to the inclusion of any property in said district.

(3) Said board shall have the power, by order entered on its minutes, to grant said petition either in whole or in part and to alter the boundaries of said public cemetery district and to annex thereto all or such portion of said territory described in said petition as will be benefited thereby.

History: En. Secs. 14, 15, Ch. 221, L. 1943; amd. Secs. 14, 15, Ch. 16, L. 1945; R.C.M. 1947, 9-214, 9-215(part); amd. Sec. 39, Ch. 349, L. 1985.

Cross-References

Notice and opportunity to be heard, Title 2, ch. 3, part 1.

Meetings of Board of County Commissioners, 7-5-2122.

7-35-2116. Treatment of annexed lands. The annexed territory shall become and be a part of such public cemetery district and shall be taxed, together with the remainder of said district, for all taxes to be thereafter levied by said board of county commissioners for the operation and maintenance of said public cemetery district.

History: En. Sec. 15, Ch. 221, L. 1943; amd. Sec. 15, Ch. 16, L. 1945; R.C.M. 1947, 9-215(part).

Cross-References

Cemetery associations — authority to acquire land — survey required, 35-20-212.

7-35-2117 through 7-35-2120 reserved.

7-35-2121. District budget — report. (1) The board of cemetery trustees shall annually present a budget to the board of county commissioners at the regular budget meetings as prescribed by law.

(2) Insofar as the same can be made applicable, the county budget system, part 23 of chapter 6, shall govern the operation of cemetery districts created under this part.

History: En. Sec. 9, Ch. 221, L. 1943; amd. Sec. 9, Ch. 16, L. 1945; amd. Sec. 1, Ch. 93, L. 1951; amd. Sec. 1, Ch. 4, L. 1955; amd. Sec. 1, Ch. 74, L. 1977; R.C.M. 1947, 9-209(part); amd. Sec. 4, Ch. 140, L. 1989.

7-35-2122. County tax levy. The board of county commissioners must, annually at the time of levying county taxes, fix and levy upon all property within the cemetery district an amount sufficient to raise the amount certified by the board of cemetery trustees to be raised by a tax on the property of the district. The tax may not exceed 4 mills on each dollar of taxable valuation on the property of the district.

History: En. Sec. 9, Ch. 221, L. 1943; amd. Sec. 9, Ch. 16, L. 1945; amd. Sec. 1, Ch. 93, L. 1951; amd. Sec. 1, Ch. 4, L. 1955; amd. Sec. 1, Ch. 74, L. 1977; R.C.M. 1947, 9-209(part); amd. Sec. 13, Ch. 263, L. 1979.

Cross-References

Responsibility of County Commissioners to fix tax rate and levy tax, 7-6-2502.

Purpose of additional mill levy to be stated, 7-6-2532.

7-35-2123. Disbursement of tax proceeds. The proceeds of taxes collected by the county treasurer for the public cemetery fund shall be disbursed to the various cemetery districts upon the submission of a claim by said cemetery districts to the board of county commissioners for their pro rata share of the proceeds of the taxes collected. Upon approval of said claim by the board of county commissioners, the county clerk shall issue a trust fund warrant drawn upon the public cemetery fund and payable to each claimant.

History: En. Sec. 1, Ch. 94, L. 1951; R.C.M. 1947, 9-209.1.

Cross-References

Role and duties of County Clerk, 7-4-2611.

Details related to county warrants, 7-6-2601.

7-35-2124. Compliance with state laws. The procedure of the collecting of the tax and the distribution of the funds shall be in accordance with the existing laws of the state of Montana.

History: En. Sec. 10, Ch. 221, L. 1943; amd. Sec. 10, Ch. 16, L. 1945; R.C.M. 1947, 9-210(part).

Cross-References

Duties of County Treasurer related to taxation, 7-6-2503.

Duties of County Clerk related to taxation, 7-6-2504.

Taxation, Title 15.

7-35-2125. Excess expenditures. Expenditures made, liabilities incurred, or warrants issued by or in behalf of any cemetery district in excess of the annual budget presented to the board of county commissioners as provided in this part and the amount appropriated for and authorized to be expended for each item in the budget shall not be a liability of the cemetery district.

History: En. Sec. 9, Ch. 221, L. 1943; amd. Sec. 9, Ch. 16, L. 1945; amd. Sec. 1, Ch. 93, L. 1951; amd. Sec. 1, Ch. 4, L. 1955; amd. Sec. 1, Ch. 74, L. 1977; R.C.M. 1947, 9-209(part).

Cross-References

Effect of exceeding budget appropriations — personal liability, 7-6-2323.

7-35-2126 through 7-35-2130 reserved.

7-35-2131. Establishment and maintenance of permanent care and improvement fund. Any public cemetery district formed under the provisions of this part which shall have established and be maintaining a cemetery shall provide, in the manner set forth in 7-35-2131 through 7-35-2150, for the establishment and maintenance of a permanent fund, the income of which shall be devoted to the care, maintenance, and improvement of such cemetery. This fund shall be known as the permanent care and improvement fund of such public cemetery district.

History: En. Sec. 1, Ch. 165, L. 1955; R.C.M. 1947, 9-216.

Cross-References

Cemetery associations — permanent care and improvement fund, Title 35, ch. 20, part 3.

7-35-2132. Application for appointment of trustees of fund. Whenever money to the amount of $100 shall have been received by such public cemetery district heretofore or hereafter formed, either from the sale of lots or from direct payments of such public cemetery district toward such a fund by lot owners, the trustees of such public cemetery district shall immediately make application to the judge of the district court of the judicial district in which the cemetery for which such trust fund exists for the appointment of a trustee or of a board of trustees of such fund.

History: **En. Sec. 2, Ch. 165, L. 1955; R.C.M. 1947, 9-217(part).**

Cross-References

Cemetery associations — trustees of fund — appointment by District Court — qualifications — powers, 35-20-302.

7-35-2133. Appointment of trustees of fund. (1) The district judge shall, upon receipt of the application, appoint a trustee or a board of trustees to administer the fund from a list submitted to him by the trustees of the public cemetery district.

(2) The number of trustees for the fund may not exceed five, with the exact number to be set at the discretion of the trustees of the public cemetery district. Each trustee for the fund must be a resident of the state during the time he exercises the powers of such trust.

(3) Whenever a person, so chosen and appointed, fails to qualify within 30 days after his appointment, a vacancy exists, and the judge of the district court shall appoint from a list submitted to him by the trustees of the public cemetery district some person possessing the above qualifications to fill the vacancy in the board of trustees of the fund. Trustees of the fund appointed by the public cemetery district or district court prior to July 1, 1955, continue to hold office as trustees until terminated as provided in 7-35-2131 through 7-35-2150.

History: **En. Sec. 2, Ch. 165, L. 1955; R.C.M. 1947, 9-217(part); amd. Sec. 4, Ch. 213, L. 1979.**

Cross-References

Cemetery associations — trustees of fund — appointment by District Court — qualifications — powers, 35-20-302.

Cemetery associations — trustees of fund — term, 35-20-303.

7-35-2134. Use of bank as trustee. The board of trustees shall also have the power and authority to nominate any bank which is authorized to act as a trust company in Montana under state or federal law to be trustee of such trust fund. In that event the district court shall make appointment of such nominee which shall serve in such capacity without bond but shall be required to make all reports and discharge all the duties and obligations required of individual trustees.

History: **En. Sec. 2, Ch. 165, L. 1955; R.C.M. 1947, 9-217(part).**

Cross-References

Trust company defined — purposes for which may be formed, 32-1-107.

7-35-2135. Term of office for trustees of fund. The tenure of office of the trustee or trustees of such fund shall be for the term of 3 years unless they permanently remove from the state of Montana or are removed from office by the judge of said district court for good cause shown or their tenure is otherwise terminated as provided in 7-35-2131 through 7-35-2150.

History: **En. Sec. 3, Ch. 165, L. 1955; R.C.M. 1947, 9-218.**

Cross-References

Cemetery associations — trustees of fund — term, 35-20-303.

7-35-2136. Vacancies. In the case of the death, resignation, disability, or removal of any member or members of said board of trustees of said fund, the judge of said district court shall forthwith appoint a trustee or trustees to fill such vacancy or vacancies in the same manner as above provided in the case of an original vacancy.

History: En. Sec. 5, Ch. 165, L. 1955; R.C.M. 1947, 9-220.

Cross-References

Cemetery associations — trustees — vacancies — how filled, 35-20-305.

7-35-2137. Compensation of trustees of fund. (1) The trustee or the members of the board of trustees of such permanent care and improvement fund shall receive such compensation as may be agreed upon between such trustee or between such board of trustees of such permanent care and improvement fund on the one hand and the board of trustees of the public cemetery district on the other provided that the total compensation of such trustee or of the entire board of trustees shall in no case exceed the sum of $100 per annum.

(2) The fees of such trustee or of the members of the board of trustees shall be paid out of the general fund of the public cemetery district until such trust fund shall reach $10,000, and thereafter the same shall be paid out of the income of such fund.

History: En. Sec. 13, Ch. 165, L. 1955; R.C.M. 1947, 9-228.

Cross-References

Cemetery associations — compensation of trustees of fund, 35-20-314.

7-35-2138. Secretary for trustees of fund. The secretary of the public cemetery district shall act as secretary of such trustee or as secretary of such board of trustees of such fund and shall keep a full record of their proceedings.

History: En. Sec. 14, Ch. 165, L. 1955; R.C.M. 1947, 9-229.

Cross-References

Cemetery associations — secretary of board, 35-20-309.

7-35-2139. Bond requirements for trustees of fund. (1) Before exercising or having any of the powers, duties, rights, titles, authorities, or franchises appertaining to such trust or to such trusteeship, each person chosen to be a trustee of such fund shall give to the public cemetery district for which the trust is maintained a bond in a sum equaling at least 1 1/3 times the value of the property on hand at the time of giving such bond, with good and sufficient sureties thereto who shall justify in the aggregate in at least double the amount of such bond, the same to be conditioned for the due and faithful performance of his trust until July 1 of the next even-numbered year after the year in which such bond shall be given and until such trustee shall give a new bond as hereinafter provided.

(2) On July 1 in each even-numbered year, each trustee shall give a new bond conditioned in the same way, the amount thereof to be determined by the same rule, and with sureties as above provided.

(3) Such bonds shall all be approved by a judge of the district court for the judicial district in which the cemetery for such trust exists or some part thereof shall be situated and shall be filed with the clerk of the district court of the county in which such cemetery is located.

History: En. Sec. 4, Ch. 165, L. 1955; R.C.M. 1947, 9-219(part).

Cross-References

Cemetery associations — trustees of fund — bond required, 35-20-304.

7-35-2140. Effect of failure to renew bond. Any failure to renew bonds within 30 days after the time hereinbefore provided shall be a sufficient ground for the removal of any trustee within the discretion of the district court.

History: En. Sec. 4, Ch. 165, L. 1955; R.C.M. 1947, 9-219(part).

Cross-References

Cemetery associations — trustees of fund — renewal of bond, 35-20-304.

7-35-2141. Reduction of bond by deposit of money and securities. (1) For the purpose of fixing the amount of the bond, the value of the property on hand may be reduced in an amount equal to the value of the money, bonds, and securities which the trustee or trustees of the permanent care and improvement fund may elect to and do deposit with the county treasurer as hereinafter provided.

(2) The trustee or trustees of such fund may deposit for safekeeping such money, bonds, and securities as he or they see fit with the county treasurer of the county in which said cemetery or some part thereof is situated. It is the duty of the county treasurer to receive and safely keep all such money, bonds, and securities or any part thereof and pay them out or deliver them up upon the order of such trustee or a majority of the trustees, when countersigned by a judge of said judicial district and not otherwise, and to keep an account with such trustee or trustees of all such transactions. For the safekeeping and payment and delivery of all such money, bonds, and securities as herein provided, the treasurer and his sureties are liable upon his official bond.

History: En. Sec. 4, Ch. 165, L. 1955; R.C.M. 1947, 9-219(part).

Cross-References

Cemetery associations — trustees of fund — deposit with County Treasurer, 35-20-304.

7-35-2142. Effect of failure of district to make application for trustees or of disability of all members of board of trustees of fund. (1) In the case of the failure of the trustees of such public cemetery district to make application to the judge of said district court for the appointment of a board of trustees of such fund as provided in 7-35-2132 or in the case of the death, removal, resignation, or disability of all the members of such board, the said rights, titles, interests, authorities, powers, franchises, and trusts of such fund shall vest in the district court of the county in which such cemetery or the greater part thereof shall be situated until the appointment and qualification of a new board of trustees. In such cases, such trustee or such board of trustees of such fund shall be appointed by the district court of said county upon application of any person interested and upon notice of other persons interested, as the judge of said court may order.

(2) The trustee or trustees appointed by the judge of said court under the provisions of this section shall have the same rights, powers, authorities, and franchises as the trustee or trustees appointed under 7-35-2131 through 7-35-2150. Such trustee or such board of trustees must annually, or more often if so required by order of such court, file in the office of the clerk of the district court of the county where such cemetery is situated a duly verified account

showing a detailed statement of all money collected and of all securities on hand, together with all money disbursed during the preceding year. Any interested party may apply to the district court for an order requiring such trustee or such board of trustees to make such an accounting at any time.

(3) Any owner of an interest in any lot in the cemetery cared for by such trust, any trustee of the public cemetery district, and any trustee of the said trust fund shall have the right to make any application to the court provided for in 7-35-2131 through 7-35-2150.

History: En. Sec. 7, Ch. 165, L. 1955; R.C.M. 1947, 9-222.

Cross-References

Cemetery associations — title to funds to vest in court when no application made for appointment or entire board is vacant — appointment by court — accounting, 35-20-307.

7-35-2143. Recording of instruments of appointment of trustees of fund. All instruments of appointment of a trustee or of a board of trustees of such funds shall be recorded with the secretary of the public cemetery district establishing the fund and shall also be filed in the office of the clerk of the district court in the county in which such public cemetery district is located.

History: En. Sec. 8, Ch. 165, L. 1955; R.C.M. 1947, 9-223.

Cross-References

Cemetery associations — recording of appointment of trustees, 35-20-308.

7-35-2144. Vesting of funds in trustees. Upon the election, appointment, and qualification, as provided in this part, of the trustees of such fund, all of the title to the funds included in said trust and all of the rights, powers, authorities, franchises, and trusts of whatsoever thereunto appertaining shall at once vest in him or them. In case of the failure of any of those so chosen and appointed to qualify within 30 days after their appointment, then the same shall vest in the one or more who shall qualify.

History: En. Sec. 2, Ch. 165, L. 1955; R.C.M. 1947, 9-217(part).

Cross-References

Cemetery associations — transfer of money received by association to trustees of fund, 35-20-310.

7-35-2145. Vesting of powers and duties in new trustees. In case of the death, resignation, disability, or removal of any one or more of the trustees of such fund, all the rights, titles, powers, authorities, franchises, and trusts whatsoever existing in such trustee at the time of such death, resignation, disability, or removal shall at once, without further act or conveyance, vest in the survivor or survivors until the vacancy or vacancies so occasioned shall be filled, when the same shall in the same manner vest in the board as so reconstituted. All newly appointed trustees shall at once, upon qualification, succeed to an equal share in all the rights, titles, powers, authorities, franchises, and trusts belonging to such board; and the same shall always be vested in the members of such board as actually constituted.

History: En. Sec. 6, Ch. 165, L. 1955; R.C.M. 1947, 9-221.

Cross-References

Cemetery associations — all powers to vest in survivors until vacancy filled — succession to powers, 35-20-306.

7-35-2146. Administration of permanent care and improvement fund. (1) From and after March 4, 1955, the trustees of such cemetery district as are mentioned in 7-35-2132 shall provide, by resolution spread upon the minutes of such public cemetery district, for the transfer to the trustees of such permanent care and improvement fund of not less than 15% or more than 40% of the money received from the sale of cemetery lots designated as perpetual care lots by said public cemetery district, together with all money theretofore or thereafter received from the owners of lots for the care of such lots. Such transfer of any such funds then on hand shall then and there be made. Such transfers shall be made thereafter quarterly, upon the first day of January, April, July, and October of each year, to the trustees of such fund.

(2) If at any time there shall remain in the hands of such public cemetery district unexpended money over and above the liabilities of the public cemetery district, the board of trustees of such public cemetery district may by a two-thirds vote appropriate the whole or any portion of such unexpended money to such permanent care and improvement fund, provided that such fund (exclusive of such portion thereof as may have been paid in by owners of lots for the care of such lots) shall never in any case be allowed to exceed the sum of $5,000 per acre of the cemetery to be cared for therewith, and when such fund shall reach such amount, all appropriations and payments thereto shall cease.

History: En. Sec. 9, Ch. 165, L. 1955; R.C.M. 1947, 9-224.

Cross-References

Cemetery associations — principal of fund to be reserved — income to be turned over to treasurer, 35-20-311.

Cemetery associations — use of income of fund, 35-20-312.

7-35-2147. Financial management of fund. (1) The principal of such fund shall in all cases remain intact and inviolate.

(2) The principal of such fund may be invested in the way in which public employees' retirement funds are permitted to be invested in Montana and not otherwise, provided that each investment made by the trustee or by the board of trustees shall be subject to the approval of the board of trustees of the public cemetery district.

(3) The trustees of such fund shall, on January 1 and July 1 in each year, turn over to the treasurer of such public cemetery district all accrued income arising from such fund, and the receipt of such treasurer therefor shall be a sufficient voucher in the hands of such trustees.

History: (1), (3)En. Sec. 10, Ch. 165, L. 1955; Sec. 9-225, R.C.M. 1947; (2)En. Sec. 12, Ch. 165, L. 1955; amd. Sec. 6, Ch. 98, L. 1974; Sec. 9-227, R.C.M. 1947; R.C.M. 1947, 9-225, 9-227.

Cross-References

Cemetery associations — principal of fund to be reserved — income to be turned over to treasurer, 35-20-311.

Cemetery associations — use of income of fund, 35-20-312.

Cemetery associations — investment of fund, 35-20-313.

7-35-2148. Disposition of fund income. (1) The income of that portion of such fund received from the sale of lots designated as perpetual care lots shall be used, in the discretion of the trustees of such public cemetery district, solely for the care, maintenance, and improvement of such cemetery lots and its grounds, roads, walks, and avenues leading thereto, except as herein provided. The income from such portion of such funds as shall have been paid in by lot owners for the care of specific lots shall be segregated from the other portion, each lot being credited with its respective income, and shall be used solely for the care of such lots, respectively.

(2) In the event of any portion of the income so paid ever remaining unexpended for such purposes for 1 year after its being so paid over to the treasurer of such public cemetery district, it shall be returned to the trustees of such fund by said treasurer and become a part of the principal.

History: En. Sec. 11, Ch. 165, L. 1955; R.C.M. 1947, 9-226(part).

Cross-References

Cemetery associations — use of income of fund, 35-20-312.

7-35-2149. Notice to purchasers of cemetery lots of transfers to fund. After July 1, 1955, all public cemetery districts shall distinctly specify in all conveyances of lots therein the percentage of the price received therefor to be transferred under the provisions of 7-35-2131 through 7-35-2150 to the permanent care and improvement fund of such public cemetery district and also such further sum, if there be any, paid by the purchaser for the permanent care of the specific lot or lots thereby conveyed to be transferred as hereinbefore provided.

History: En. Sec. 11, Ch. 165, L. 1955; R.C.M. 1947, 9-226(part).

Cross-References

Cemetery associations — use of proceeds from sale of lots, 35-20-214.

7-35-2150. Annual report — availability. The trustee or the board of trustees of such fund shall annually on January 1 make its report of the condition of such trust fund to the trustees of the public cemetery district as hereinbefore provided. Such reports shall always be kept by the secretary of such public cemetery district and by the clerk of the district court and be open to the inspection of any person owning an interest in any lot in the cemetery cared for by such fund.

History: En. Sec. 15, Ch. 165, L. 1955; R.C.M. 1947, 9-230.

Cross-References

Cemetery associations — annual report of trustees — duty of County Attorney, 35-20-207.

Part 22
Cemeteries in Counties

Part Cross-References

Cemetery associations, Title 35, ch. 20.

7-35-2201. Power of county commissioners to conduct cemeteries. The board of county commissioners of any county within Montana is hereby given jurisdiction and power to:

(1) establish and conduct cemeteries;

(2) acquire lands for said purpose by purchase, condemnation, gift, or devise; and

(3) acquire by purchase, condemnation, gift, or devise cemeteries already established and conducted by persons, firms, or corporations, including municipal corporations.

History: **En. Sec. 1, Ch. 39, L. 1919; re-en. Sec. 4514, R.C.M. 1921; re-en. Sec. 4514, R.C.M. 1935; amd. Sec. 1, Ch. 172, L. 1974; R.C.M. 1947, 9-401(part).**

Cross-References

General authority of County Commissioners, 7-5-2101.

Cemetery associations — eminent domain, 35-20-104.

7-35-2202. Restrictions on burial not to be affected. Nothing contained in 7-35-101 or 7-35-2201 will permit the interment of bodies of deceased persons in any such cemetery condemned and taken over under authority of 7-35-2201 as are debarred from burial therein under the articles of incorporation or bylaws of such cemetery association or corporation.

History: **En. Sec. 1, Ch. 39, L. 1919; re-en. Sec. 4514, R.C.M. 1921; re-en. Sec. 4514, R.C.M. 1935; amd. Sec. 1, Ch. 172, L. 1974; R.C.M. 1947, 9-401(part).**

Cross-References

Cemetery associations — bylaws, 35-20-202.

Cemetery associations — record of interments open to public, 35-20-210.

Parts 23 through 40 reserved

Part 41

Cemeteries in Municipalities

Part Cross-References

Cemetery associations, Title 35, ch. 20.

7-35-4101. Power of municipalities to establish and maintain cemeteries. The city or town council has power to establish and regulate cemeteries within or without the city or town and acquire lands for this purpose and to prohibit the establishment of cemeteries within 3 miles of the city or town.

History: **En. Subd. 46, Sec. 5039, R.C.M. 1921; amd. Sec. 1, Ch. 115, L. 1925; amd. Sec. 1, Ch. 20, L. 1927; re-en. Sec. 5039.45, R.C.M. 1935; R.C.M. 1947, 11-948.**

Cross-References

General powers of Municipal Council, 7-5-4101.

7-35-4102. Vesting of title to cemetery grounds — restrictions on use. The title to lands used as a public cemetery or graveyard, situated in or near to any city, town, or village and used by the inhabitants thereof as a burial-ground continuously without interruption for 5 years, is vested in the inhabitants of such city, town, or village. The lands must not be used for any other purpose than a public cemetery, except that the bodies interred therein may be removed and no other interred therein upon the order of the board of county commissioners, city council, or other body having authority when it appears that the public health is endangered or for any other good cause, but a new cemetery must be purchased and laid out by proper authority and such bodies removed and interred therein, and the old cemetery may be sold and the proceeds applied to the purchase of the new cemetery.

History: **En. Sec. 2880, Pol. C. 1895; re-en. Sec. 1988, Rev. C. 1907; re-en. Sec. 5168, R.C.M. 1921; Cal. Pol. C. Sec. 3105; re-en. Sec. 5168, R.C.M. 1935; R.C.M. 1947, 9-301.**

Cross-References

Municipalities — power of condemnation, 7-5-4106.

7-35-4103. What constitutes a cemetery. Six or more human bodies buried at one place constitutes the place a cemetery.

History: **En. Sec. 2881, Pol. C. 1895; re-en. Sec. 1989, Rev. C. 1907; re-en. Sec. 5169, R.C.M. 1921; Cal. Pol. C. Sec. 3106; re-en. Sec. 5169, R.C.M. 1935; R.C.M. 1947, 9-302.**

Cross-References

Cemetery associations — local government approval prior to commencing operations, 35-20-201.

7-35-4104. Cemeteries on public lands. Incorporated cities or towns and, for unincorporated towns or villages, the board of county commissioners of the county may survey, lay out, and dedicate a portion of the public lands situated in or near the city, town, or village, not exceeding 5 acres, for cemetery and burial purposes. The survey and description thereof, together with a certified copy of the order constituting the land as a cemetery, must be recorded in the office of the county clerk of the county in which the land is located.

History: **En. Sec. 2882, Pol. C. 1895; re-en. Sec. 1990, Rev. C. 1907; re-en. Sec. 5170, R.C.M. 1921; Cal. Pol. C. Sec. 3107; re-en. Sec. 5170, R.C.M. 1935; R.C.M. 1947, 9-303; amd. Sec. 14, Ch. 263, L. 1979.**

Cross-References

Cemetery associations — authority to acquire land — survey required, 35-20-212.

7-35-4105. Layout of cemeteries. The public cemeteries of cities, towns, villages, or neighborhoods must be enclosed and laid off into lots.

History: **En. Sec. 2884, Pol. C. 1895; re-en. Sec. 1992, Rev. C. 1907; re-en. Sec. 5172, R.C.M. 1921; Cal. Pol. C. Sec. 3109; re-en. Sec. 5172, R.C.M. 1935; R.C.M. 1947, 9-305(part).**

Cross-References

Cemetery associations — sale of lots, 35-20-213.

7-35-4106. Inhabitants of municipality to own cemetery. The inhabitants of any city, town, village, or neighborhood may, by subscription or otherwise, purchase or receive by gift or donation lands not exceeding 160 acres to be used as a cemetery, the title thereof to be vested in such inhabitants, and when once dedicated for use for burial purposes, the lands must thereafter be used for no other purpose except as provided in 7-35-4102.

History: **En. Sec. 2883, Pol. C. 1895; re-en. Sec. 1991, Rev. C. 1907; re-en. Sec. 5171, R.C.M. 1921; Cal. Pol. C. Sec. 3108; re-en. Sec. 5171, R.C.M. 1935; R.C.M. 1947, 9-304.**

Cross-References

Cemetery associations — authority to acquire land, 35-20-212.

7-35-4107. Jurisdiction and control of cemeteries. The general management, conduct, and regulation of interments, permits to inter or remove interred bodies, and the disposition of lots, keeping the same in order, are under the jurisdiction and control of:

(1) the cities and towns owning the same if incorporated; or

(2) the board of county commissioners of the county in which they are situated, if not incorporated.

History: **En. Sec. 2884, Pol. C. 1895; re-en. Sec. 1992, Rev. C. 1907; re-en. Sec. 5172, R.C.M. 1921; Cal. Pol. C. Sec. 3109; re-en. Sec. 5172, R.C.M. 1935; R.C.M. 1947, 9-305(part).**

Cross-References

Cemetery associations — operations generally, Title 35, ch. 20, part 2.

7-35-4108. Powers of authorities having jurisdiction and control of cemeteries. The board of county commissioners, city trustees, or other corresponding authorities having jurisdiction and control of cemeteries may make general rules therefor and appoint sextons and other officers to enforce obedience to the same, with such other powers and duties regarding the cemetery as they may deem necessary, including the right to raise money by taxation, purchase land, and lay out cemeteries, and manage them.

History: **En. Sec. 2885, Pol. C. 1895; re-en. Sec. 1993, Rev. C. 1907; re-en. Sec. 5173, R.C.M. 1921; re-en. Sec. 5173, R.C.M. 1935; R.C.M. 1947, 9-306.**

Cross-References

Cemetery associations — bylaws, 35-20-202.

7-35-4109. Register must be kept. The authority having the control of a public or private cemetery must require a register of name, age, birthplace, and date of death and burial of every body interred therein, to be kept by the sexton or other officer, open to public inspection.

History: **En. Sec. 2886, Pol. C. 1895; re-en. Sec. 1994, Rev. C. 1907; re-en. Sec. 5174, R.C.M. 1921; re-en. Sec. 5175, R.C.M. 1935; R.C.M. 1947, 9-307.**

Cross-References

Cemetery associations — record of interments, 35-20-209.

TITLES 8 AND 9

RESERVED

TITLE 10

MILITARY AFFAIRS AND DISASTER AND EMERGENCY SERVICES

Ch.
1. Militia.
2. Veterans.
3. Disaster and Emergency Services.
4. State Emergency Telephone System.

CHAPTER 1

MILITIA

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Part 2 — Officers of Militia

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10-1-605. Suspension of license fees for persons in military service.
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10-1-611. Authority of commanding officer to arrest.
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Chapter Cross-References

Civilian control of military, Art. II, sec. 32, Mont. Const.

Importation of armed persons, Art. II, sec. 33, Mont. Const.

Composition of militia, Art. VI, sec. 13, Mont. Const.

Governor as commander-in-chief of militia, Art. VI, sec. 13, Mont. Const.

Call of forces, when authorized, Art. VI, sec. 13, Mont. Const.

Department of Military Affairs created — appointment of Adjutant General, 2-15-1201 through 2-15-1203.

Power of Mayor to call out militia, 7-4-4303.

Exemption from arrest, 46-6-102.

Ammunition — blanks, 50-37-102.

Part 1
General Provisions

10-1-101. Definitions. Unless the context requires otherwise, in this title, the following definitions apply:

(1) "Department" means department of military affairs.

(2) "Militia" means all the military forces of this state, whether organized or active or inactive.

(3) "National guard" means the army national guard and the air national guard.

(4) "Officer" means commissioned or warrant officer.

History: En. 77-1601 by Sec. 25, Ch. 94, L. 1974; amd. Sec. 7, Ch. 49, L. 1977; R.C.M. 1947, 77-1601.

Cross-References

Department of Military Affairs created, 2-15-1201.

10-1-102. Powers and duties of department of military affairs. Under the direction of the governor, the department shall:

(1) keep a roster of all officers and enlisted persons of the militia of this state whether active, inactive, or retired;

(2) supervise, administer, and coordinate civil defense and disaster control activities;

(3) recruit, mobilize, administer, train, discipline, equip, and supply the organized militia;

(4) maintain the archives and keep the records and documents required by law or regulation to be filed with the United States department of defense;

(5) establish and maintain the headquarters required for the militia;

(6) exercise the powers vested in it and perform any other duty and function required of it by the governor and by federal and state laws and regulations.

History: En. 77-1606 by Sec. 30, Ch. 94, L. 1974; amd. Sec. 8, Ch. 49, L. 1977; R.C.M. 1947, 77-1606.

Cross-References

Department power to authorize construction on federal land, 18-2-102.

Construction — contracting agency, 18-2-103.

Montana Historical Society directed to store certain war records, 22-3-221.

10-1-103. Classes of militia. The classes of the militia are:

(1) the organized militia, which consists of the national guard and the Montana home guard;

(2) the unorganized militia, which consists of the members of the militia who are not members of the organized militia.

History: En. 77-1602 by Sec. 26, Ch. 94, L. 1974; R.C.M. 1947, 77-1602.

Cross-References

Composition of militia, Art. VI, sec. 13, Mont. Const.

"Militia" defined, 10-1-101.

Composition of home guard, 10-1-701.

10-1-104. Federal regulations to govern. (1) Federal laws and regulations, forms, precedents, and usages relating to and governing the armed forces of the United States and the militia, as in effect on October 1, 1995, insofar as they are applicable and not inconsistent with the constitution of this state, apply to and govern the military forces of this state, including all members of the national guard on active duty within the state as active duty guard/reserve (AGR) personnel under Title 32 of the United States Code.

(2) The Uniform Code of Military Justice, as in effect on October 1, 1995, including the regulations, manuals, forms, precedents and usages implementing, interpreting, and complementing the code, is adopted for use by the military forces of this state and applies, insofar as the code is not otherwise inconsistent with the constitution of this state and except as otherwise provided

by this title or by rule adopted by the department, to the greatest extent practicable to govern the military forces of this state, including all members of the national guard on active duty within the state as active duty guard/reserve (AGR) personnel under Title 32 of the United States Code when the members are serving other than in a federal capacity under Title 10 of the United States Code.

History: En. 77-1603 by Sec. 27, Ch. 94, L. 1974; R.C.M. 1947, 77-1603; amd. Sec. 1, Ch. 430, L. 1983; amd. Sec. 1, Ch. 120, L. 1995.

Compiler's Comments

1995 Amendment: Chapter 120 near middle of (1), after "militia", substituted reference to October 1, 1995, for "including The Uniform Code of Military Justice, shall"; inserted (2) relating to adoption of The Uniform Code of Military Justice; and made minor changes in style.

10-1-105. Rules by governor and adjutant general. (1) The governor may prescribe rules to carry out the functions and duties under this title and the constitution of this state. These rules must conform to any applicable federal laws and regulations.

(2) The adjutant general may adopt rules governing the armed forces of the state and to carry out the duties of the adjutant general and the duties of the department. The rules must conform to applicable federal laws and regulations.

History: En. 77-1604 by Sec. 28, Ch. 94, L. 1974; R.C.M. 1947, 77-1604; amd. Sec. 1, Ch. 91, L. 1995.

Compiler's Comments

1995 Amendment: Chapter 91 inserted (2) authorizing Adjutant General to adopt rules that conform to applicable federal laws and regulations governing the armed forces of the state and to carry out the duties. Amendment effective March 9, 1995.

Retroactive Applicability: Section 3, Ch. 91, L. 1995, provided: "[This act] applies retroactively, within the meaning of 1-2-109, to regulations adopted by the department of military affairs after July 1, 1974."

Cross-References

State militia exempt from public participation and administrative procedures concerning rulemaking, 2-3-102, 2-4-102.

10-1-106. Proclamation of martial rule. When the militia is employed in aid of civil authority, the governor may by proclamation declare any part of a county or municipality in which troops are serving to be subject to martial rule.

History: En. 77-1605 by Sec. 29, Ch. 94, L. 1974; R.C.M. 1947, 77-1605.

Cross-References

Governor as commander-in-chief of militia, Art. VI, sec. 13, Mont. Const.

Limitations on powers of militia, 10-3-102.

Governor as commander-in-chief during emergencies, 10-3-305.

10-1-107. Property remains public property. All property issued to organizations and members of the organized militia remains public property.

History: En. 77-2001 by Sec. 51, Ch. 94, L. 1974; R.C.M. 1947, 77-2001.

Cross-References

Damage or destruction of public property unlawful, 45-6-101.

10-1-108. Armories. (1) A county, city, or town may convey or lease real property to the state for armories or other military facilities.

(2) A county, city, or town in which a unit of the national guard is organized and regularly stationed may provide any part of the funds to build

an armory. The armory must be of sufficient size and suitable for the drill of the unit.

History: En. 77-2006 by Sec. 56, Ch. 94, L. 1974; R.C.M. 1947, 77-2006.

Cross-References

Use of armories by home guard, 10-1-703.

Fire protection — armories, Title 50, ch. 61.

10-1-109. Lease of real property for military facilities. The department of military affairs may lease real property for armories or other military facilities.

History: En. 77-2007 by Sec. 57, Ch. 94, L. 1974; R.C.M. 1947, 77-2007.

Cross-References

Use of armories by home guard, 10-1-703.

10-1-110. Repealed. Sec. 16, Ch. 724, L. 1991.

History: En. Sec. 1, Ch. 135, L. 1965; amd. Sec. 1, Ch. 114, L. 1967; R.C.M. 1947, 53-106.7; amd. Sec. 1, Ch. 306, L. 1983.

Part 2

Officers of Militia

10-1-201. Officers. (1) The governor shall appoint all officers of the militia.

(2) Officers must be citizens of the United States.

(3) Before a person can be appointed an officer by the governor, he shall be examined and adjudged qualified to be an officer by an examining board. The composition, appointment, and examination procedure of the board and the nature and scope of examinations shall be prescribed by federal law or regulation or state regulations.

(4) Each officer shall hold office under his appointment until he is regularly appointed to another grade or office or until he is regularly retired, discharged, dismissed, or placed in the reserve.

History: En. 77-1701 by Sec. 31, Ch. 94, L. 1974; R.C.M. 1947, 77-1701.

Cross-References

Militia officers commissioned by the Governor, 2-16-204.

"Officer" defined, 10-1-101.

Pay and allowances, 10-1-502.

Allowances for incidental expenses, 10-1-503.

Authority to arrest, 10-1-611, 10-1-612.

Medical officers exempt from medical license requirements, 37-3-103(1)(i).

10-1-202. Oath of office. (1) Except when a comparable oath is subscribed to under federal law or regulation, every officer shall take and subscribe to the following oath of office:

"I, ..., do solemnly swear that I will support and defend the constitution of the United States and the constitution of the state of Montana against all enemies, foreign and domestic; that I will bear true faith and allegiance to the same; and that I will obey the orders of the president of the United States and the governor of the state of Montana; that I make this obligation freely, without any mental reservation or purpose of evasion; and that I will well and faithfully discharge the duties of the office of .... in the .... upon which I am about to enter, so help me God."

(2) If an officer refuses or neglects to take the oath, he shall be considered to have resigned the office and a new appointment shall be made.

History: En. 77-1702 by Sec. 32, Ch. 94, L. 1974; R.C.M. 1947, 77-1702.

Cross-References

Oath of enlistment, 10-1-302.

10-1-203. Retirement of officers. (1) An officer of the national guard shall be retired by order of the governor for the following reasons:

(a) upon reaching his 60th birthday; or

(b) his unfitness for military service because of a physical disability.

(2) An officer is retired with the grade and rank held by him at the time of retirement.

History: En. 77-1703 by Sec. 33, Ch. 94, L. 1974; R.C.M. 1947, 77-1703.

Cross-References

Examination as to fitness for military service, 10-1-206.

Members of National Guard considered state employees, 19-3-402.

Election to qualify military service under Public Employees' Retirement System, 19-3-503.

10-1-204. Resignation of officers. An officer may resign, but the resignation is not effective until it has been accepted by the governor.

History: En. 77-1704 by Sec. 34, Ch. 94, L. 1974; R.C.M. 1947, 77-1704.

Cross-References

Governor to commission all militia officers, 2-16-204.

Governor to appoint all militia officers, 10-1-201.

10-1-205. Vacating commissions or warrants. The commission or warrant of an officer shall be vacated:

(1) upon acceptance by the governor of the resignation of the officer; or

(2) by an order of the governor discharging the officer:

(a) for failure to maintain his qualifications for federal recognition;

(b) upon the scheduled or actual termination or withdrawal of his federal recognition where federal recognition is a prerequisite for continued service;

(c) upon a change in federal reserve status which makes him ineligible to continue assigned to a unit of the organized militia;

(d) for his absence from duty without leave for more than 3 months; or

(e) upon the recommendation of a board of examination or the sentence of a court-martial.

History: En. 77-1705 by Sec. 35, Ch. 94, L. 1974; amd. Sec. 9, Ch. 49, L. 1977; R.C.M. 1947, 77-1705.

Cross-References

Federal regulations to govern militia, 10-1-104.

Persons subject to jurisdiction of military courts, 10-1-402.

10-1-206. Examination as to fitness — board of examination. (1) The governor, when he considers it necessary, may order an officer to appear before a board of examination. The board of examination shall consist of three officers, senior in rank to the officer whose fitness for service is under examination. The board may:

(a) inquire into the fitness for military service due to physical disability of an officer under 10-1-203(1)(b);

(b) inquire into the moral character, capacity, and professional fitness of an officer in order to make a recommendation under 10-1-205(2)(e).

(2) The board, under 10-1-203(1)(b), may recommend the retention of the officer being examined or his retirement because of a physical inability to perform active service.

(3) The board, under 10-1-205(2)(e), may recommend the discharge and the vacating of his commission or warrant.

(4) The findings of the board become effective only upon the approval of the governor.

History: En. 77-1706 by Sec. 36, Ch. 94, L. 1974; R.C.M. 1947, 77-1706.

Cross-References

National Guard officers retired by Governor, 10-1-203.

10-1-207. Uniform allowance for officers. There may be paid annually on April 1 a uniform allowance to each properly uniformed and equipped officer of the organized militia.

History: En. 77-1707 by Sec. 37, Ch. 94, L. 1974; R.C.M. 1947, 77-1707; amd. Sec. 1, Ch. 20, L. 1995.

Compiler's Comments

1995 Amendment: Chapter 20 deleted (1) that read: "(1) Every officer of the organized militia shall, within 60 days from the date of the order whereby he is appointed, provide himself, at his own expense, with the uniforms and equipment prescribed by the department for his rank and assignment"; and at beginning, after "There", substituted "may" for "shall".

Cross-References

Pay and allowances, 10-1-502.

Allowances for incidental expenses, 10-1-503.

10-1-208. Officer need not vacate civil office. A person may be an officer in the militia or in a reserve component of the armed forces of the United States without vacating a civil office or position in this state.

History: En. 77-1708 by Sec. 38, Ch. 94, L. 1974; R.C.M. 1947, 77-1708.

Cross-References

Depriving members of organized militia of employment, 10-1-603.

Leave of absence for public employees attending military training, 10-1-604.

Part 3

Enlisted Members

10-1-301. Terms of enlistment. Except as otherwise provided by federal law or regulation, enlistments, reenlistments, and extension of enlistments shall be for periods as prescribed by the department.

History: En. 77-1801 by Sec. 39, Ch. 94, L. 1974; R.C.M. 1947, 77-1801.

Cross-References

Governor authorized to extend terms of enlistment, 10-1-303.

Pay and allowances, 10-1-502.

10-1-302. Oath of enlistment. (1) Except when a comparable oath of enlistment is subscribed to under federal law or regulation, every person who enlists or reenlists shall take and subscribe to the following oath of enlistment:

"I hereby acknowledge to have voluntarily enlisted this .... day of .... in the .... of the United States and the state of Montana for a period of .... years under the conditions prescribed by law, unless sooner discharged by proper authority. And I do solemnly swear that I will bear true faith and allegiance to the United States of America and to the state of Montana, and that I will serve them honestly and faithfully against all their enemies, and that I will obey the orders of the president of the United States, the governor of the state of Montana, and the officers appointed over me."

(2) Any officer of the organized militia or any officer of the armed forces of the United States, detailed to duty with any component of the organized militia of this state, may administer the oath of enlistment to enlisted men.

History: En. 77-1802 by Sec. 40, Ch. 94, L. 1974; R.C.M. 1947, 77-1802; amd. Sec. 2, Ch. 430, L. 1983.

Cross-References

Officer's oath, 10-1-202.

10-1-303. Extension of terms of service. If an emergency is declared by the president, congress, the governor, or the legislature, the governor may by proclamation, in accordance with federal and state law and regulation, extend the enlistment of an enlisted member of the organized militia until 6 months after the termination of that emergency.

History: En. 77-1803 by Sec. 41, Ch. 94, L. 1974; R.C.M. 1947, 77-1803.

Cross-References

Emergency powers of Governor generally, Title 10, ch. 3.

10-1-304. Retirement of enlisted members. An enlisted member of the national guard shall be retired by order of the governor for the following reasons:

(1) upon reaching his 60th birthday; or

(2) his unfitness for military service because of a physical disability.

History: En. 77-1804 by Sec. 42, Ch. 94, L. 1974; R.C.M. 1947, 77-1804.

Cross-References

Members of National Guard considered state employees, 19-3-402.

Election to qualify military service under Public Employees' Retirement System, 19-3-503.

Part 4

Military Courts

10-1-401. Courts — composition, jurisdiction, powers, and procedures. The military courts for the militia shall be constituted like similar courts of the armed forces of the United States. They have the jurisdiction and powers, except as to punishments, and shall follow the forms and procedures of those courts. The convening authority for these military courts and maximum punishments authorized shall be as prescribed by federal and state law and regulation applicable to the national guard.

History: En. 77-1901 by Sec. 43, Ch. 94, L. 1974; R.C.M. 1947, 77-1901.

Cross-References

Federal regulations to govern, 10-1-104.

Rules by Governor, 10-1-105.

10-1-402. Persons subject. All members of the organized militia and all other persons lawfully called, ordered, or drafted for duty in the organized militia are subject to this part from the dates they are required by the terms of the call, order, or other directive to serve.

History: En. 77-1902 by Sec. 44, Ch. 94, L. 1974; R.C.M. 1947, 77-1902.

Cross-References

Composition of militia, Art. VI, sec. 13, Mont. Const.

10-1-403. Territorial applicability. (1) This part is applicable in all places in this state. It also applies to all persons while serving outside this state and while going to and returning from service outside this state.

(2) Courts-martial and courts of inquiry may be convened and held in units of the organized militia while serving outside this state. These courts serve with the same jurisdiction and powers as if held in this state. Offenses committed outside this state may be tried and punished either in or out of this state.

History: **En. 77-1903 by Sec. 45, Ch. 94, L. 1974; R.C.M. 1947, 77-1903.**

Cross-References

Cession and retrocession of state jurisdiction generally, Title 2, ch. 1, part 2.

State criminal jurisdiction, 46-2-101.

10-1-404. Persons authorized to execute process. All processes, writs, warrants, and sentences of military courts shall be directed to and executed by any sheriff or any officer or member of the police department of any county or municipality. These documents shall be in the same form as processes, writs, or warrants issued by civil courts. All officers to whom a process, writ, or warrant is directed shall execute it and make return thereof to the officer issuing it.

History: **En. 77-1904 by Sec. 46, Ch. 94, L. 1974; R.C.M. 1947, 77-1904.**

Cross-References

Service of process on military reservations, 2-1-204.

Return of process generally, Title 25, ch. 3, part 6.

10-1-405. Confinement of persons committed by military court. The keepers of a municipal or county jail shall receive a person committed to them by a military court and shall confine him in accordance with the direction of the court.

History: **En. 77-1905 by Sec. 47, Ch. 94, L. 1974; R.C.M. 1947, 77-1905.**

Cross-References

County jails, Title 7, ch. 32, part 22.

Municipal jails, Title 7, ch. 32, part 42.

10-1-406. Reporter and witness fees. A witness subpoenaed to appear before a military court shall receive the same fee as provided by law for witnesses appearing in a civil court. The reporter of a court shall be paid for stenographic services the same as provided by law for similar services in civil courts.

History: **En. 77-1906 by Sec. 48, Ch. 94, L. 1974; R.C.M. 1947, 77-1906.**

Cross-References

District Court reporter's salary and expenses, 3-5-602.

Cost of copies of proceedings, 3-5-604.

Fee for court reporter, 25-1-202.

Witness fees generally, Title 26, ch. 2, part 5.

10-1-407. Fees of civil officers — records. Fees for services of civil officers shall be the same as provided by law for services in civil courts. Records of all fees, costs, and disbursements shall be kept in the headquarters of the organization concerned.

History: **En. 77-1907 by Sec. 49, Ch. 94, L. 1974; R.C.M. 1947, 77-1907.**

Cross-References

Sheriff's fees for service of process and other papers, 7-32-2141.

10-1-408. Trial by civil authority — when authorized. In a case where the offense charged is also an offense against civil authority, the convening authority of a court-martial may, upon request of the civil authorities, order the person charged to be turned over to the appropriate civil authorities of this state for trial.

History: En. 77-1908 by Sec. 50, Ch. 94, L. 1974; R.C.M. 1947, 77-1908.

Cross-References

Sovereignty and jurisdiction of the state, Title 2, ch. 1, part 1.

Cession and retrocession of jurisdiction by state, Title 2, ch. 1, part 2.

State criminal jurisdiction, 46-2-101.

State sovereignty in space, 67-1-202.

10-1-409 and 10-1-410 reserved.

10-1-411. Administration of military justice. (1) When a court-martial is convened, the senior judge advocate of that element shall assign trial counsel and defense counsel for the court-martial.

(2) A military judge appointed pursuant to 10-1-104 and the manual for courts-martial must be appointed by the adjutant general. The military judge must be an attorney licensed to practice law in the state of Montana and a member of the Montana national guard senior in rank to the accused, but may not be the state judge advocate of the Montana national guard. The adjutant general may prescribe additional requirements for a military judge.

(3) Following approval of the findings and sentence of a court-martial by the court-martial convening authority, the findings and sentence or either the findings or sentence may be appealed to the adjutant general of the Montana national guard in a manner directed by the adjutant general. The adjutant general may reverse a decision of the convening authority only if the findings of fact are clearly erroneous, a fraud upon the court has occurred, the law has been incorrectly applied, or the sentence is an abuse of discretion. Because courts-martial are military courts of the military justice system adopted under 10-1-104 and because the federal military appellate courts do not have jurisdiction over national guard members not in active federal service, no appeal to other courts is allowed.

History: En. Sec. 2, Ch. 120, L. 1995.

Part 5
Compensation for Militia

10-1-501. Pay for activated militia from general fund. When the organized militia is ordered into active duty as provided for in Article VI, section 13, of the constitution of this state, warrants for pay and expenses shall be drawn upon the general fund of the state.

History: En. 77-2002 by Sec. 52, Ch. 94, L. 1974; R.C.M. 1947, 77-2002.

Cross-References

Emergency powers of Governor generally, Title 10, ch. 3.

10-1-502. Pay and allowances. (1) An officer ordered into active duty as provided for in Article VI, section 13, of the constitution of this state shall receive pay and allowances as prescribed for an officer of corresponding grade and length of service when on active duty in federal service.

(2) An enlisted member ordered into active duty as provided for in Article VI, section 13, of the constitution of this state shall receive pay at rates equivalent to twice those allowed for an enlisted member of corresponding grade and length of time when on active duty in federal service. This schedule of pay for enlisted members applies only to the first 15 days of service. After 15 days, an enlisted member shall receive the pay and allowances as prescribed for an enlisted member of corresponding grade when on active duty in federal service.

(3) The pay and allowances provided for in this section may not be paid when pay and allowances for the active duty are provided out of federal funds.

History: En. 77-2003 by Sec. 53, Ch. 94, L. 1974; R.C.M. 1947, 77-2003.

Cross-References

Exemption from statewide classification and pay plans, 2-18-103.

Extension of terms of service, 10-1-303.

Pay, allowances, pensions, and benefits of the home guard, 10-1-704.

Military pay exempt from state taxation, 15-30-116.

10-1-503. Allowances for incidental expenses. Each commanding officer may receive an allowance for the incidental expenses of his command.

History: En. 77-2004 by Sec. 54, Ch. 94, L. 1974; R.C.M. 1947, 77-2004.

10-1-504. Repealed. Sec. 13, Ch. 430, L. 1983.

History: En. 77-2005 by Sec. 55, Ch. 94, L. 1974; R.C.M. 1947, 77-2005.

Part 6

Rights of and Duties Owed Militia

Part Cross-References

Servicemen to be given special consideration, Art. II, sec. 35, Mont. Const.

Militia members exempt from civil arrest, 46-6-102.

10-1-601. Actions against militia members — attorney's fees. When an action is commenced in a court against a member of the organized militia for an act done in his official capacity in the discharge of his duty or for an alleged omission to do an act which it was his duty to perform, the defendant shall be defended by the attorney general at the expense of this state, but private counsel may be employed by the defendant.

History: En. 77-2101 by Sec. 58, Ch. 94, L. 1974; R.C.M. 1947, 77-2101.

10-1-602. Right-of-way while performing military duty. (1) The commanding officer of a unit of the organized militia parading or performing any military duty in a street or highway may require all persons on the street or highway to yield the right-of-way to troops. Motor vehicles traveling in military convoy shall be accorded the right-of-way on all streets and highways.

(2) The exercise of the right-of-way provided for in this section may not interfere with the carriage of the United States mail or with the progress of an ambulance or members of a police or fire department.

(3) A person who fails to yield the right-of-way as prescribed by this section is guilty of a misdemeanor.

History: En. 77-2102 by Sec. 59, Ch. 94, L. 1974; amd. Sec. 10, Ch. 49, L. 1977; R.C.M. 1947, 77-2102.

Cross-References

Arrest of trespassers and disturbers, 10-1-612.

Place of imprisonment when none specified, 46-18-211.

Misdemeanor penalty when no penalty is specified, 46-18-212.

Police vehicles and authorized emergency vehicles, 61-8-107.

Flashing amber light on mail delivery vehicles, 61-9-229.

10-1-603. Prohibition to deprive members of organized militia of employment — entitlement to unpaid leave of absence during state emergency. (1) A person may not willfully deprive a member of the organized militia of employment or prevent the member from being employed or obstruct or annoy a member in respect to the member's trade, business, or employment because of membership in the organized militia.

(2) A person who serves in active state service in the organized militia in time of a disaster or an emergency declared by the proper authority of the state and not pursuant to orders issued under Title 10 or 32 of the United States Code is entitled to a leave of absence from the person's civilian employment during the period of that service. Upon termination of service, the person is entitled to reemployment with the same seniority, status, pay, and vacation as the person would have had if the person had not been absent during the period of service. However, during the period of service, the person may or may not accrue vacation leave or other benefits offered by the employer, at the option of the employer. The leave of absence may not be deducted from any sick leave, vacation leave, or other leave, and reinstatement must be in the same position as or a comparable position to the position that the person held prior to the period of service. This subsection does not entitle a public employee given leave and reinstatement pursuant to this subsection to any pay from the person's civilian employment pursuant to 10-1-604 or other law during the period of service. Nothing in this subsection may be construed to prevent an employee from voluntarily using accrued vacation leave or other already earned benefits during the leave of absence.

(3) A person may not dissuade any person from enlisting in the organized militia by threatening to injure or injuring the person's business, employment, or trade.

History: En. 77-2103 by Sec. 60, Ch. 94, L. 1974; R.C.M. 1947, 77-2103(1), (2); amd. Sec. 1, Ch. 77, L. 1995.

Compiler's Comments

1995 Amendment: Chapter 77 inserted (2) concerning leave of absence for active state service in the organized militia in time of a disaster or an emergency, providing that the person may or may not accrue vacation leave or other benefits offered by the employer, at the option of the employer, and prohibiting leave of absence from being deducted from any sick leave, vacation leave, or other leave; and made minor changes in style. Amendment effective March 6, 1995.

Cross-References

Misdemeanor violation, 10-1-615.

10-1-604. Leave of absence of public employees attending training camp or similar training program. A state, city, town, or county employee who is a member of the organized militia of this state or who is a member of the organized or unorganized reserve corps or military forces of the United States and who has been an employee for a period of 6 months shall be given leave of absence with pay for a period of time not to exceed 15 working days in a calendar year for attending regular encampments, training cruises, and similar training programs of the organized militia or of the military forces of the United States. This leave may not be charged against the employee's annual vacation time.

History: En. 77-2104 by Sec. 61, Ch. 94, L. 1974; R.C.M. 1947, 77-2104; amd. Sec. 1, Ch. 80, L. 1991.

Cross-References

Officer not required to vacate civil office, 10-1-208.

Reemployment of veterans, 10-2-211.

Reemployment of public employee upon completion of service, 10-2-221.

10-1-605. Suspension of license fees for persons in military service. (1) The collection from any person in the military service of the United States, as defined by the Soldiers' and Sailors' Civil Relief Act of October 17, 1940, as amended October 6, 1942, of any license fee or privilege fee or charge or tax for and as a prerequisite for carrying on any personal service occupation or any profession, annually, or for any other period of time, whether falling due prior to or during his period of military service, shall not be made for the period or any part thereof during which such person was in military service and for an additional period of 6 months after the termination of his period of military service, if such person were not actually professing, carrying on, and practicing his profession, avocation, or occupation in the state of Montana during such period as herein extended; and such person or licensee shall not be liable for such license fee, privilege fee, tax, or personal service charge for any period during which said conditions obtain.

(2) The status, standing, and right of any such person or licensee under any of the laws of the state of Montana shall remain in the same force and effect in which said status, right, and standing existed at the time such person entered the military service of the United States, and for the whole period of such military service, and for an additional period of 6 months after the termination of said period of military service. At the end of said extended period said person shall be deemed to be and shall stand fully and completely restored to all the rights, privileges, of his profession, avocation, or occupation, to all intents and purposes as if he had not been absent in military service and had been regularly carrying on his profession, avocation, and occupation and regularly paying all fees and charges due for the same. After the termination of said extended period, 6 months following termination of his military service, said person shall be subject for the next ensuing annual period or any part thereof and regularly thereafter to all license fees, privilege fees, charges, and taxes then lawfully collectible pursuant to law.

History: En. Sec. 1, Ch. 106, L. 1943; R.C.M. 1947, 84-5301.

Cross-References

Military pay exempt from state taxation, 15-30-116.

Professions and Occupations, Title 37.

10-1-606. Suspension of property taxes for persons in military service. (1) All taxes, whether on real or personal property, due on property owned by any citizen of the state of Montana in the active military or naval service of the United States shall be held in abeyance, no proceedings taken for the collection thereof, and no penalties or interests shall be added thereto until the expiration of the period of 1 year from and after the cessation of hostilities or discharge from military or naval service.

(2) To obtain the benefits of this section it shall be necessary for some person, on behalf of such person in the military or naval service, to file with the treasurer of the proper county an affidavit to the effect that the person against whom such taxes are charged is in such active military or naval service, which affidavit must be filed at or before the time when such taxes would become delinquent, and upon the filing thereof the treasurer shall make a notation upon his records to the effect that the collection of such taxes is suspended on account of the military or naval service of such taxpayer. But nothing in this section shall be so construed as to prevent such county treasurer from receiving payment of any such taxes whenever offered.

History: (1)En. Sec. 1, Ch. 14, Ex. L. 1918; re-en. Sec. 2236, R.C.M. 1921; re-en. Sec. 2236, R.C.M. 1935; Sec. 84-41-103, R.C.M. 1947; (2)En. Sec. 2, Ch. 14, Ex. L. 1918; re-en. Sec. 2237, R.C.M. 1921; re-en. Sec. 2237, R.C.M. 1935; Sec. 84-41-104, R.C.M. 1947; R.C.M. 1947, 84-41-103, 84-41-104.

Cross-References

Military pay exempt from state taxation, 15-30-116.

10-1-607 through 10-1-610 reserved.

10-1-611. Authority of commanding officer to arrest. The commanding officer at any drill, parade, encampment, or other duty may order those under his command to perform any military duty he requires. The commanding officer may arrest, for the time of the drill, parade, encampment, or other duty, an officer or enlisted man who disobeys the orders of his superior officer.

History: En. 77-2105 by Sec. 62, Ch. 94, L. 1974; R.C.M. 1947, 77-2105.

Cross-References

Militia members exempt from civil arrest, 46-6-102.

10-1-612. Arrest of trespassers and disturbers. (1) The commanding officer may arrest or authorize the arrest of a person who trespasses upon a camp or parade ground, armory, arsenal, rifle range, or any other place devoted to or used for military purposes.

(2) The commanding officer may arrest a person who:

(a) interrupts, molests, or disturbs the orderly discharge of duty by those under arms;

(b) disturbs or prevents the passage of troops going to or returning from any duty; or

(c) assaults a member of the uniformed militia while that member is performing any military duty.

(3) A person who is arrested under this section shall be transferred to the civil authorities in the county where the offense was committed.

(4) A person committing an offense for which an arrest may be made pursuant to this section is guilty of a misdemeanor.

History: En. 77-2106 by Sec. 63, Ch. 94, L. 1974; amd. Sec. 11, Ch. 49, L. 1977; R.C.M. 1947, 77-2106.

Cross-References

Right-of-way while performing military duty, 10-1-602.

Definition of assault, 45-5-201.

Place of imprisonment when none specified, 46-18-211.

Penalty when none specified, 46-18-212.

10-1-613. Unlawful sale or detention of military property. A person may not conceal, sell, dispose of, offer for sale, purchase, retain after demand made by an officer, or in any manner pledge or pawn any arms, equipment, or other military property issued by the United States or this state for use of the militia.

History: **En. 77-2107 by Sec. 64, Ch. 94, L. 1974; R.C.M. 1947, 77-2107(part).**

Cross-References

Property remains public property, 10-1-107.

Unlawful sale as misdemeanor, 10-1-615.

Damage or destruction of public property unlawful, 45-6-101.

Definition of theft, 45-6-301.

10-1-614. Unlawful wearing of uniform. A person who is not a member of the organized militia may not wear the uniform or insignia issued or authorized for use by the organized militia.

History: **En. 77-2108 by Sec. 65, Ch. 94, L. 1974; R.C.M. 1947, 77-2108(part).**

10-1-615. Misdemeanor violations. A person who violates 10-1-603, 10-1-613, or 10-1-614 is guilty of a misdemeanor.

History: **Ap. p. Sec. 60, Ch. 94, L. 1974; Sec. 77-2103, R.C.M. 1947; Ap. p. Sec. 64, Ch. 94, L. 1974; Sec. 77-2107, R.C.M. 1947; Ap. p. Sec. 65, Ch. 94, L. 1974; Sec. 77-2108, R.C.M. 1947; R.C.M. 1947, 77-2103(3), 77-2107(part), 77-2108(part).**

Cross-References

Place of imprisonment when none is specified, 46-18-211.

Misdemeanor penalty when no penalty is specified, 46-18-212.

Part 7

Home Guard

10-1-701. Home guard — organization and composition. The home guard may be organized, maintained, and disbanded at the discretion of the governor, in accordance with federal law and regulation, when additional defense forces are needed in this state. The home guard shall be composed of officers assigned to it and any able-bodied citizen of this state who volunteers to serve in it. If additional persons are needed in the home guard, members of the unorganized militia shall serve if enrolled by draft or otherwise as provided by law and regulation.

History: **En. 77-2201 by Sec. 66, Ch. 94, L. 1974; R.C.M. 1947, 77-2201.**

Cross-References

Composition of militia, Art. VI, sec. 13, Mont. Const.

Classes of militia, 10-1-103.

Rules by Governor, 10-1-105.

10-1-702. Gubernatorial rules for guard. The home guard shall be organized, armed, equipped, maintained, disciplined, governed, administered, and trained under rules prescribed by the governor. These rules shall conform to federal law and regulations.

History: **En. 77-2202 by Sec. 67, Ch. 94, L. 1974; R.C.M. 1947, 77-2202.**

Cross-References

Federal regulations to govern, 10-1-104.

Rules by Governor, 10-1-105.

10-1-703. Use of armories and equipment. The governor may make available to the home guard the facilities of state armories and their equipment and any other state land and property as may be available. The governor may requisition from the federal government, for the use of the home guard, arms, ammunition, clothing, equipment, and other items in accordance with federal law and regulations. The governing body of a county, municipality, or school district may make available to the home guard any premises, facilities, equipment, or other property belonging to or under the control of the county, municipality, or school district.

History: **En. 77-2203 by Sec. 68, Ch. 94, L. 1974; R.C.M. 1947, 77-2203.**

Cross-References

Armories, 10-1-108.

Lease of real property for military facilities, 10-1-109.

10-1-704. Pay and allowances. An officer or member of the home guard on active duty in the service of this state shall receive the same pay and allowances as prescribed for officers and enlisted members of the militia under 10-1-502.

History: **En. 77-2204 by Sec. 69, Ch. 94, L. 1974; R.C.M. 1947, 77-2204; amd. Sec. 3, Ch. 430, L. 1983.**

Part 8

National Guard Reenlistment or Extension Incentive

10-1-801. Short title. This part may be cited as the “Montana National Guard Reenlistment or Extension Act of 1981”.

History: **En. Sec. 1, Ch. 506, L. 1981.**

10-1-802. Purpose. This part is intended to encourage a greater number of extensions and reenlistments in the Montana national guard, which is the state’s only source of organized manpower in times of emergency.

History: **En. Sec. 2, Ch. 506, L. 1981.**

10-1-803. Definitions. As used in this part, the following definitions apply:

(1) “Bonus” means the extension or reenlistment incentive bonus provided by this part.

(2) “Extension” means the continuation of active national guard service with the Montana national guard.

(3) “Member” means any enlisted member of the Montana army or air national guard.

(4) “Reenlistment” means a second or subsequent voluntary enrollment in the Montana national guard.

(5) “Secretary” means a designee of the department of military affairs.

History: **En. Sec. 3, Ch. 506, L. 1981.**

10-1-804. Bonus. A member is entitled to receive a bonus payment for each year of service for which he extends or reenlists. The bonus shall be paid to each eligible member within 60 days following the successful completion of a year of service for which he extended or reenlisted. The secretary shall set the amount of the bonus based on the appropriation for that purpose.

History: **En. Sec. 4, Ch. 506, L. 1981.**

10-1-805. Eligibility. The bonus must be granted to a person who:

(1) extends his original enlistment or reenlists in the Montana national guard;

(2) holds a rank commensurate with a unit vacancy in accordance with the national guard bureau's policy;

(3) does not have 20 years of total service;

(4) is not a civil service employee in a full-time capacity with the national guard, including but not limited to active duty for training or full-time training duty;

(5) is not eligible for any federally funded national guard bonus for the reenlistment or extension covered by this part; and

(6) attends 90% of the scheduled drills and annual training in the year for which the benefit is to be paid.

History: En. Sec. 5, Ch. 506, L. 1981.

10-1-806. Administration. (1) The secretary shall administer this part. He shall maintain records and make rules necessary for its administration.

(2) He shall determine the eligibility of members to receive the bonus and disburse a bonus payment upon a determination of eligibility.

History: En. Sec. 6, Ch. 506, L. 1981.

Cross-References

Notice and opportunity to be heard — exceptions, 2-3-102.

Montana Administrative Procedure Act — definitions, 2-4-102.

CHAPTER 2

VETERANS

Part 1 — Board of Veterans' Affairs

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10-2-301. Renumbered 61-3-451 by Code Commissioner, 1985.
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10-2-303. Renumbered 61-3-453 by Code Commissioner, 1985.
10-2-304. Renumbered 61-3-455 by Code Commissioner, 1985.
10-2-305 through 10-2-310 reserved.
10-2-311 through 10-2-314. Repealed.

Part 4 — Montana Veterans' Home

10-2-401. Location and function of homes — persons admitted.
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10-2-404. Acceptance and deposit of federal money.
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10-2-412. Repealed.
10-2-413. Repealed.
10-2-414. Repealed.
10-2-415. Repealed.
10-2-416. Pledge to continue operation and maintenance.
10-2-417. Use of funds generated by taxation on cigarettes.

Part 5 — Veterans' Burial

10-2-501. Burial allowance for military.
10-2-502. County of residence to pay expense.
10-2-503. Report of actions and expenses by burial supervisor.
10-2-504. Duty of clerk.
10-2-505. No compensation for burial supervisor.
10-2-506. Not to apply to nonresidents.

Part 6 — State Veterans' Cemetery

10-2-601. State veterans' cemetery.
10-2-602. Rulemaking authority.
10-2-603. Special revenue account — use of funds — solicitation.

Chapter Cross-References

Veterans allowed special treatment, Art. II, sec. 35, Mont. Const.

Taxes, property exemption, 15-6-211.

"Agent orange" payments — income tax exemption, 15-30-111.

Teachers' retirement system — service credits, 19-20-404.

Raffles — nonprofit groups exempt from permit or investigative fees, 23-5-413.

Benefits not exempt from execution when debt is for child support, 25-13-608.

Veterans' public employment preference, Title 39, ch. 29.

Parking privilege for disabled veteran, 49-4-302.

Special parking and vehicle licensing privileges, Title 61, ch. 3, parts 4 and 5.

Special fishing permits, 87-2-802.

Housing developments, 90-6-104.

Part 1
Board of Veterans' Affairs

Part Cross-References

Board of Veterans' Affairs created, 2-15-1205.

10-2-101. Definitions. Unless the context requires otherwise, in this chapter the following definitions apply:

(1) "Board" means the board of veterans' affairs provided for in 2-15-1205.

(2) "Veteran" means an honorably discharged individual who served on active duty, other than for training, with the United States armed forces, including an individual who served with the United States coast guard. The

term includes individuals who served with the first special service force and the American merchant marine in oceangoing service during the period of armed conflict, December 7, 1941, to August 15, 1945.

History: En. Sec. 36, Ch. 121, L. 1974; R.C.M. 1947, 71-2201; amd. Sec. 3, Ch. 271, L. 1983; amd. Sec. 1, Ch. 609, L. 1989; amd. Sec. 1, Ch. 70, L. 1991.

10-2-102. Duty of board — employee qualifications. (1) The board shall establish a statewide service for discharged veterans and their families, actively cooperate with state and federal agencies having to do with the affairs of veterans and their families, and promote the general welfare of all veterans and their families.

(2) Employees of the board must be residents of this state. Whenever possible all employees of the board shall have served in the military forces of the United States during World War I, World War II, or the Korean or the Vietnam conflicts and shall have been honorably discharged therefrom. Preference for employment shall be given to disabled veterans.

History: En. Sec. 2, Ch. 111, L. 1945; amd. Sec. 1, Ch. 92, L. 1971; Sec. 77-1002, R.C.M. 1947; amd. and redes. by Sec. 37, Ch. 121, L. 1974; amd. Sec. 39, Ch. 535, L. 1975; R.C.M. 1947, 71-2202.

Cross-References

Rules for determining residence, 1-1-215.

Veterans' public employment preference, Title 39, ch. 29.

Handicapped persons' public employment preference, Title 39, ch. 30.

10-2-103. Seal — acknowledgments — officers. (1) The board may provide for a seal.

(2) The members and employees of the board may take acknowledgments, depositions, and administer oaths and affirmations in any matters connected with the affairs of the board or with the official duties of the members or employees of the board.

(3) The board shall select from its membership a chairman, a vice-chairman, and a secretary.

History: En. Sec. 5, Ch. 111, L. 1945; Sec. 77-1005, R.C.M. 1947; amd. and redes. by Sec. 38, Ch. 121, L. 1974; R.C.M. 1947, 71-2203.

10-2-104. Aid by state, county, and municipal officers. All state, county, and municipal officers shall render such aid to the board as shall be within their power and consistent with the duties of their respective offices.

History: En. Sec. 6, Ch. 111, L. 1945; Sec. 77-1006, R.C.M. 1947; amd. and redes. by Sec. 39, Ch. 121, L. 1974; R.C.M. 1947, 71-2204.

10-2-105. Extra compensation for service forbidden. A member or employee of the board may not accept, receive, or charge any money or thing of value for the performance of any service rendered to any veteran or his or her dependents, at any time or in any manner, other than the compensation allowed by law. A person who violates this section is guilty of a misdemeanor.

History: En. Sec. 7, Ch. 111, L. 1945; Sec. 77-1007, R.C.M. 1947; amd. and redes. by Sec. 40, Ch. 121, L. 1974; R.C.M. 1947, 71-2205.

Cross-References

Misdemeanor penalty when no penalty is specified, 46-18-212.

10-2-106. Acceptance of federal funds. The board may accept from the federal government or any agencies thereof any funds made available to carry out purposes within the scope of the activities and purposes of the board and accept such funds as the board directs.

History: **En. Sec. 1, Ch. 256, L. 1947; Sec. 77-1009, R.C.M. 1947; amd. and redes. by Sec. 41, Ch. 121, L. 1974; R.C.M. 1947, 71-2206.**

10-2-107. Contracts for federal reimbursement funds. The governor of this state and the chairman and secretary of the board may sign contracts with the federal government or any agency thereof for the reimbursement of the board for any work which the board may do for which any federal statute provides reimbursement to the states.

History: **En. Sec. 2, Ch. 256, L. 1947; Sec. 77-1010, R.C.M. 1947; amd. and redes. by Sec. 42, Ch. 121, L. 1974; R.C.M. 1947, 71-2207.**

Part 2

Reemployment on Completion of Service

Part Cross-References

Veterans allowed special treatment, Art. II, sec. 35, Mont. Const.

Veterans' preference in public employment, Title 39, ch. 29.

Veterans' preference — exception from prohibitions, 49-2-405, 49-3-103.

10-2-201 through 10-2-206. Repealed. Sec. 14, Ch. 1, Sp. L. 1983.

Compiler's Comments

Histories of Repealed Sections:

10-2-201. En. Sec. 1, Ch. 211, L. 1921; re-en. Sec. 5653, R.C.M. 1921; amd. Sec. 1, Ch. 133, L. 1927; re-en. Sec. 5653, R.C.M. 1935; amd. Sec. 1, Ch. 66, L. 1937; amd. Sec. 1, Ch. 160, L. 1943; amd. Sec. 1, Ch. 223, L. 1947; amd. Sec. 1, Ch. 26, L. 1949; amd. Sec. 1, Ch. 120, L. 1955; amd. Sec. 1, Ch. 193, L. 1969; amd. Sec. 38, Ch. 535, L. 1975; amd. Sec. 4, Ch. 49, L. 1977; R.C.M. 1947, 77-501(1).

10-2-202. En. Sec. 1, Ch. 211, L. 1921; re-en. Sec. 5653, R.C.M. 1921; amd. Sec. 1, Ch. 133, L. 1927; re-en. Sec. 5653, R.C.M. 1935; amd. Sec. 1, Ch. 66, L. 1937; amd. Sec. 1, Ch. 160, L. 1943; amd. Sec. 1, Ch. 223, L. 1947; amd. Sec. 1, Ch. 26, L. 1949; amd. Sec. 1, Ch. 120, L. 1955; amd. Sec. 1, Ch. 193, L. 1969; amd. Sec. 38, Ch. 535, L. 1975; amd. Sec. 4, Ch. 49, L. 1977; R.C.M. 1947, 77-501(2); amd. Sec. 1, Ch. 142, L. 1979; amd. Sec. 1, Ch. 5, L. 1981.

10-2-203. En. Sec. 1, Ch. 211, L. 1921; re-en. Sec. 5653, R.C.M. 1921; amd. Sec. 1, Ch. 133, L. 1927; re-en. Sec. 5653, R.C.M. 1935; amd. Sec. 1, Ch. 66, L. 1937; amd. Sec. 1, Ch. 160, L. 1943; amd. Sec. 1, Ch. 223, L. 1947; amd. Sec. 1, Ch. 26, L. 1949; amd. Sec. 1, Ch. 120, L. 1955; amd. Sec. 1, Ch. 193, L. 1969; amd. Sec. 38, Ch. 535, L. 1975; amd. Sec. 4, Ch. 49, L. 1977; R.C.M. 1947, 77-501(3).

10-2-204. En. Sec. 1, Ch. 211, L. 1921; re-en. Sec. 5653, R.C.M. 1921; amd. Sec. 1, Ch. 133, L. 1927; re-en. Sec. 5653, R.C.M. 1935; amd. Sec. 1, Ch. 66, L. 1937; amd. Sec. 1, Ch. 160, L. 1943; amd. Sec. 1, Ch. 223, L. 1947; amd. Sec. 1, Ch. 26, L. 1949; amd. Sec. 1, Ch. 120, L. 1955; amd. Sec. 1, Ch. 193, L. 1969; amd. Sec. 38, Ch. 535, L. 1975; amd. Sec. 4, Ch. 49, L. 1977; R.C.M. 1947, 77-501(4).

10-2-205. En. Sec. 1, Ch. 211, L. 1921; re-en. Sec. 5653, R.C.M. 1921; amd. Sec. 1, Ch. 133, L. 1927; re-en. Sec. 5653, R.C.M. 1935; amd. Sec. 1, Ch. 66, L. 1937; amd. Sec. 1, Ch. 160, L. 1943; amd. Sec. 1, Ch. 223, L. 1947; amd. Sec. 1, Ch. 26, L. 1949; amd. Sec. 1, Ch. 120, L. 1955; amd. Sec. 1, Ch. 193, L. 1969; amd. Sec. 38, Ch. 535, L. 1975; amd. Sec. 4, Ch. 49, L. 1977; R.C.M. 1947, 77-501(5).

10-2-206. En. Sec. 1, Ch. 211, L. 1921; re-en. Sec. 5653, R.C.M. 1921; amd. Sec. 1, Ch. 133, L. 1927; re-en. Sec. 5653, R.C.M. 1935; amd. Sec. 1, Ch. 66, L. 1937; amd. Sec. 1, Ch. 160, L. 1943; amd. Sec. 1, Ch. 223, L. 1947; amd. Sec. 1, Ch. 26, L. 1949; amd. Sec. 1, Ch. 120, L. 1955; amd. Sec. 1, Ch. 193, L. 1969; amd. Sec. 38, Ch. 535, L. 1975; amd. Sec. 4, Ch. 49, L. 1977; R.C.M. 1947, 77-501(6).

10-2-207 through 10-2-210 reserved.

10-2-211. Reemployment of veterans upon completion of service. (1) Any person inducted into the armed forces of the United States as a result of the operation of any selective training and service act or national guard and reserve officers mobilization act since 1948 who has satisfactorily completed his period of training or service as attested by a certificate to that effect shall be reemployed in the position he left in order to perform such training or service if:

(a) he is still qualified to perform the duties of the position;

(b) the position he formerly held was not a temporary one; and

(c) he makes application for reemployment within 40 days after he is retired from training or service.

(2) Should any person qualified for reemployment be a schoolteacher or instructor, the board of trustees or other employing agency of the school involved is not obligated to rehire the person until the beginning of the semester or quarter following the one in which the application for reemployment was made.

History: En. Sec. 1, Ch. 150, L. 1941; amd. Sec. 1, Ch. 209, L. 1951; R.C.M. 1947, 77-601; amd. Sec. 2, Ch. 142, L. 1979.

Cross-References

Officer not required to vacate civil office, 10-1-208.

Leave of absence for public employees attending training camp, 10-1-604.

Restoration of benefits, 10-2-213.

Enforcement procedure, 10-2-214.

10-2-212. Private employer's duty. If such person was in the employ of a private employer, such employer shall restore such person to such position or to a position of like seniority, status, and pay unless the employer's circumstances have so changed as to make it impossible or unreasonable to do so.

History: En. Sec. 2, Ch. 150, L. 1941; R.C.M. 1947, 77-602.

Cross-References

Restoration of benefits, 10-2-213.

10-2-213. Restoration of benefits. Any person who is restored to a position in accordance with 10-2-211 or 10-2-212 shall be considered as having been on leave of absence during the period of training or service in the armed forces of the United States and at the expiration of the period shall be entitled to be restored to his employment without loss of seniority, shall be entitled to participate in insurance or other benefits offered by the employer in accordance with established rules and practices relating to employees on leave of absence, and shall not be discharged from the position without cause within 1 year after restoration.

History: En. Sec. 3, Ch. 150, L. 1941; R.C.M. 1947, 77-603; amd. Sec. 3, Ch. 142, L. 1979.

10-2-214. Enforcement procedure. In case any private employer refuses to reemploy any person entitled to reemployment under the provisions of 10-2-211 through 10-2-214, the district court of the judicial district in which such private employer maintains his place of business has power, upon the filing of a motion, petition, or other appropriate pleading by the person entitled to such benefits, to specifically require such employer to comply with 10-2-211 through 10-2-214, and, as an incident thereto, to compensate such person for any loss of wages or benefits suffered by such employer's unlawful action. Upon application to the county attorney of the county in which such private employer maintains a place of business by any person claiming to be entitled to redress under 10-2-211 through 10-2-214, the county attorney shall appear and act as attorney for such person in the amicable settlement of the claim or in the filing of any motion, petition, or other appropriate pleading to specifically require such employer to comply with such provisions. No fees or court costs may be taxed against the person applying for such benefits.

History: En. Sec. 4, Ch. 150, L. 1941; amd. Sec. 5, Ch. 49, L. 1977; R.C.M. 1947, 77-604.

10-2-215 through 10-2-220 reserved.

10-2-221. Reemployment of public employee upon completion of service. Any person inducted into the armed forces of the United States or any member of any reserve component of the armed forces or national guard or any retired personnel ordered into the active military service of the United States who, in order to perform such training, service, or active duty, leaves a position, other than a temporary position, in the employ of the state or any political subdivision thereof and who receives a certificate of completion of training or service from the proper authorities of the United States government and is still qualified to perform the duties of such position shall be restored to:

(1) the position or to a position of like seniority, status, and pay if the position was in the employ of the state or any political subdivision thereof, excluding elective positions, and the position or department has not been abolished or consolidated; or

(2) the position, status, and pay at any time during the term for which he was elected if the position was that of an elected, executive, or judicial officer of the state or any political subdivision thereof.

History: En. Sec. 1, Ch. 47, L. 1941; R.C.M. 1947, 77-701; amd. Sec. 4, Ch. 142, L. 1979.

Cross-References

Officer not required to vacate civil office, 10-1-208.

Depriving members of organized militia of employment, 10-1-603.

Leave of absence for public employee during training, 10-1-604.

Reemployment of veterans, 10-2-211.

Enforcement, 10-2-226.

Appointment of acting public officer, 10-2-227.

Absence for military duty not to create vacancy in office, 10-2-228.

10-2-222. Application for reemployment. A person asking restoration to a position in accordance with the provisions of 10-2-221(1) shall, in order to qualify for the restoration of such position, make application for reemployment within 40 days after he is relieved from such training and service. Such application must be in writing and presented to the officer, district, board, or employing unit of the state or political subdivision thereof by which such applicant was formerly employed.

History: En. Sec. 2, Ch. 47, L. 1941; R.C.M. 1947, 77-702.

Cross-References

Enforcement, 10-2-226.

10-2-223. Application for reinstatement of officer. A person seeking restoration to an elective office in accordance with the provisions of 10-2-221(2) shall, in order to qualify under the provisions of that section, make application for reinstatement to such office within 40 days after he is relieved from such training and service. Such applications must be in writing and presented to the governor in the case of state elective offices and to the board of county commissioners in the case of county, township, or district offices.

History: En. Sec. 3, Ch. 47, L. 1941; R.C.M. 1947, 77-703.

10-2-224. Reinstatement for remainder of term. Any person who is restored to a position in accordance with the provisions of 10-2-221(2) shall be considered as having been on leave of absence during his period of active military service and shall be immediately so restored to his official position as such officer for the balance of the term for which he was elected.

History: En. Sec. 5, Ch. 47, L. 1941; R.C.M. 1947, 77-705.

10-2-225. No loss of seniority or benefits. Any person who is restored to a position in accordance with the provisions of 10-2-221(1) shall be considered as having been on furlough or leave of absence during his period of training and service in the land or naval forces, shall be so restored without loss of seniority (if seniority rules are applicable in such particular position), shall be entitled to participate in any insurance or other benefits offered by the state of Montana or the political subdivision thereof pursuant to established rules and practices relating to employees on furlough or on leave of absence in effect at the time such person is ordered into such service and, except as otherwise provided herein, shall not be discharged from such position without cause within 1 year after such restoration.

History: En. Sec. 4, Ch. 47, L. 1941; R.C.M. 1947, 77-704.

10-2-226. Enforcement. In case of any failure or refusal by any officer, board, department, or employing unit of the state or any political subdivision thereof to comply with the provisions of 10-2-221, 10-2-224, or 10-2-225, the district court of the state of Montana for the county in which such person seeking restoration of position resides shall have the power, upon the filing of a motion, petition, or other appropriate pleading by the person entitled to the benefits of these provisions, to specifically require such officer, department, board, or employing unit to comply with such provision for any loss of wages or benefits suffered by reason of such an unlawful action. The court shall order a speedy hearing in any such case and shall advance it on the calendar. Upon application to the county attorney of the county in which the applicant resides in the case of county, township, and district offices and positions and to the attorney general of the state of Montana in the case of state offices and positions, by any person claiming to be entitled to the benefits of such provisions, such county attorney or attorney general, if reasonably satisfied that the person so applying is entitled to such benefits, shall appear and act as attorney for such person in the amicable adjustment of the claim or in the filing of any motion, petition, or other appropriate pleading and prosecution thereof to specifically require a compliance with such provisions; provided that no fees or court costs shall be taxed against the person so applying for such benefits.

History: En. Sec. 6, Ch. 47, L. 1941; R.C.M. 1947, 77-706.

10-2-227. Acting officer — how appointed. The governor, in the case of district judges and officers elected from the state at large, and the board of county commissioners, in the case of members of either house of the legislature and county, township, or district officers elected from such county, shall appoint an "acting" officer to temporarily replace any elected officer, designated in 10-2-221(2), who enters military service in the manner set forth in 10-2-221. "Acting" officers so appointed shall be appointed for a period not to exceed the unexpired term of the officer whose duties he assumes, and such appointment shall be subject to the right of the elected officer to the restoration of his position.

History: En. Sec. 7, Ch. 47, L. 1941; amd. Sec. 6, Ch. 49, L. 1977; R.C.M. 1947, 77-707.

10-2-228. Absence for military service creates no vacancy in office. It is specifically provided that the provisions of 2-16-112, subsections (5), (6), and (7) of 2-16-501, and 7-4-2208, shall not be, and the same are declared not to be, applicable insofar as they relate to absence or residence of any officer of the state or political subdivision thereof caused by the military service of such officer as set forth in 10-2-221. It is specifically declared that the absence of such officer caused by such military service shall not create a vacancy in the office to which he was elected.

History: En. Sec. 8, Ch. 47, L. 1941; R.C.M. 1947, 77-708.

Cross-References

Officer not required to vacate civil office, 10-1-208.

Leave of absence of public employee attending training, 10-1-604.

Part 3
Veterans' Benefits

Part Cross-References

Veterans allowed special treatment, Art. II, sec. 35, Mont. Const.

10-2-301. Renumbered 61-3-451 by Code Commissioner, 1985. Sec. 7, Ch. 159, L. 1985.

10-2-302. Renumbered 61-3-452 by Code Commissioner, 1985. Sec. 7, Ch. 159, L. 1985.

10-2-303. Renumbered 61-3-453 by Code Commissioner, 1985. Sec. 7, Ch. 159, L. 1985.

10-2-304. Renumbered 61-3-455 by Code Commissioner, 1985. Sec. 7, Ch. 159, L. 1985.

10-2-305 through 10-2-310 reserved.

10-2-311 through 10-2-314. Repealed. Sec. 3, Ch. 170, L. 1989.

Compiler's Comments

Histories of Repealed Sections:

10-2-311. En. Sec. 1, Ch. 194, L. 1943; amd. Sec. 1, Ch. 44, L. 1945; Sec. 77-901, R.C.M. 1947; amd. and redes. 75-8611 by Sec. 4, Ch. 94, L. 1974; R.C.M. 1947, 75-8611.

10-2-312. En. Sec. 1, Ch. 141, L. 1957; amd. Sec. 1, Ch. 150, L. 1965; amd. Sec. 1, Ch. 225, L. 1969; amd. Sec. 1, Ch. 64, L. 1974; Sec. 77-909, R.C.M. 1947; amd. and redes. 75-8612 by Sec. 5, Ch. 94, L. 1974; amd. Sec. 3, Ch. 49, L. 1977; R.C.M. 1947, 75-8612; amd. Sec. 5, Ch. 142, L. 1979.

10-2-313. En. Sec. 2, Ch. 141, L. 1957; Sec. 77-910, R.C.M. 1947; amd. and redes. 75-8613 by Sec. 6, Ch. 94, L. 1974; R.C.M. 1947, 75-8613.

10-2-314. En. Sec. 3, Ch. 141, L. 1957; Sec. 77-911, R.C.M. 1947; amd. and redes. 75-8614 by Sec. 7, Ch. 94, L. 1974; R.C.M. 1947, 75-8614.

Part 4
Montana Veterans' Home

Part Cross-References

Constitutional authority for establishment, Art. XII, sec. 3, Mont. Const.

General administration of institutions, Title 53, ch. 1.

Residents subject to per diem and ancillary charges, 53-1-402.

10-2-401. Location and function of homes — persons admitted. The institutions at Columbia Falls and in eastern Montana are the Montana veterans' homes, and their primary function is to provide a home and subsistence for veterans. The department of public health and human services may also admit spouses or surviving spouses of veterans to the homes if space allows.

History: En. Sec. 20, Ch. 199, L. 1965; amd. Sec. 40, Ch. 535, L. 1975; R.C.M. 1947, 80-1801; amd. Sec. 2, Ch. 609, L. 1989; amd. Sec. 11, Ch. 683, L. 1989; amd. Sec. 1, Ch. 262, L. 1991; amd. Sec. 36, Ch. 546, L. 1995.

Compiler's Comments

1995 Amendment: Chapter 546 in second sentence substituted "department of public health and human services" for "department of corrections and human services". Amendment effective July 1, 1995.

10-2-402. Superintendent to be given veterans' preference. In the selection of the superintendent of each of the Montana veterans' homes, the department of public health and human services shall apply the preference granted to veterans and disabled veterans under 39-29-102, but not the preference granted to other persons under 39-29-102 or Title 39, chapter 30.

History: En. Sec. 21, Ch. 199, L. 1965; R.C.M. 1947, 80-1802; amd. Sec. 1, Ch. 119, L. 1981; amd. Sec. 11, Ch. 1, Sp. L. 1983; amd. Sec. 7, Ch. 646, L. 1989; amd. Sec. 12, Ch. 683, L. 1989; amd. Sec. 1, Ch. 262, L. 1991; amd. Sec. 37, Ch. 546, L. 1995.

Compiler's Comments

1995 Amendment: Chapter 546 substituted "department of public health and human services" for "department of corrections and human services". Amendment effective July 1, 1995.

10-2-403. Eligibility for residence in home. To be eligible for residence in a Montana veterans' home under rules prescribed by the department of public health and human services, a person must be a veteran or the spouse or surviving spouse of a veteran. Consideration must also be given to:

(1) the person's age;

(2) the person's physical and mental status;

(3) the person's ability or inability to locate suitable alternative accommodations;

(4) the person's term of residence in Montana;

(5) the person's gender as it relates to availability of appropriate living space;

(6) the ability of the Montana veterans' home to meet the person's needs; and

(7) other admission requirements established by the department.

History: En. Sec. 22, Ch. 199, L. 1965; amd. Sec. 41, Ch. 535, L. 1975; R.C.M. 1947, 80-1803; amd. Sec. 1, Ch. 469, L. 1983; amd. Sec. 3, Ch. 609, L. 1989; amd. Sec. 13, Ch. 683, L. 1989; amd. Sec. 1, Ch. 262, L. 1991; amd. Sec. 38, Ch. 546, L. 1995.

Compiler's Comments

1995 Amendment: Chapter 546 in introductory clause substituted "department of public health and human services" for "department of corrections and human services". Amendment effective July 1, 1995.

Cross-References

Rules for determining residence, 1-1-215.

Adoption and publication of rules, Title 2, ch. 4, part 3.

10-2-404. Acceptance and deposit of federal money. The department of public health and human services may accept money from the federal government that becomes available to the state as a result of operating the Montana veterans' homes and shall deposit the money in the state treasury for the benefit of the homes. If a resident of a home is transferred to another institution, the department of public health and human services shall continue to draw from the federal government any money available for the maintenance of the former resident.

History: En. Sec. 23, Ch. 199, L. 1965; R.C.M. 1947, 80-1804; amd. Sec. 14, Ch. 683, L. 1989; amd. Sec. 1, Ch. 262, L. 1991; amd. Sec. 39, Ch. 546, L. 1995.

Compiler's Comments

1995 Amendment: Chapter 546 in two places substituted "department of public health and human services" for "department of corrections and human services"; in second sentence, after "institution", deleted "as defined in 53-1-101"; and made minor changes in style. Amendment effective July 1, 1995.

Cross-References

Federal revenues and endowments, Title 17, ch. 3, part 1.

10-2-405 through 10-2-410 reserved.

10-2-411. Repealed. Sec. 85, Ch. 10, L. 1993.

History: En. Sec. 1, Ch. 683, L. 1989.

10-2-412. Repealed. Sec. 19, Ch. 579, L. 1993.

History: En. Sec. 2, Ch. 683, L. 1989; amd. Sec. 17, Ch. 10, L. 1993.

10-2-413. Repealed. Sec. 85, Ch. 10, L. 1993, and Sec. 19, Ch. 579, L. 1993.

History: En. Sec. 3, Ch. 683, L. 1989; amd. Sec. 1, Ch. 262, L. 1991.

10-2-414. Repealed. Sec. 85, Ch. 10, L. 1993.

History: En. Sec. 4, Ch. 683, L. 1989.

10-2-415. Repealed. Sec. 85, Ch. 10, L. 1993.

History: En. Sec. 9, Ch. 683, L. 1989; amd. Sec. 1, Ch. 262, L. 1991.

10-2-416. Pledge to continue operation and maintenance. Pursuant to 38 U.S.C. 641 and 5035(a)(6), the state shall appropriate funds either from the general fund or from funds generated under 16-11-111 to the department of public health and human services financial support necessary to provide for continued operation and maintenance of the state home for veterans in eastern Montana. The department of public health and human services may contract with a private vendor to provide for the operation of the eastern Montana veterans' home and may charge the contract vendor a rental fee for the maintenance and upkeep of the facility.

History: En. Sec. 10, Ch. 683, L. 1989; amd. Sec. 1, Ch. 262, L. 1991; amd. Sec. 18, Ch. 10, L. 1993; amd. Sec. 2, Ch. 579, L. 1993; amd. Sec. 40, Ch. 546, L. 1995.

Compiler's Comments

1995 Amendment: Chapter 546 in two places substituted "department of public health and human services" for "department of corrections and human services". Amendment effective July 1, 1995.

10-2-417. Use of funds generated by taxation on cigarettes. (1) Revenue generated by 16-11-119 and allocated to the department of public health and human services must be used to support the operation and maintenance of the Montana veterans' homes programs.

(2) The legislature shall appropriate from the account established in 16-11-119 the funds required for the operation and maintenance of the Montana veterans' homes.

History: En. Sec. 2, Ch. 548, L. 1993; amd. Sec. 41, Ch. 546, L. 1995.

Compiler's Comments

1995 Amendment: Chapter 546 in (1) substituted "department of public health and human services" for "department of corrections and human services". Amendment effective July 1, 1995.

Part 5
Veterans' Burial

Part Cross-References

Veterans allowed special treatment, Art. II, sec. 35, Mont. Const.

10-2-501. Burial allowance for military. (1) The board of commissioners of each county in this state shall designate a person in the county, preferably a veteran, as veterans' burial supervisor.

(2) The veterans' burial supervisor shall cause to be decently interred the body of any veteran who was a resident of the state of Montana at the time of death. In performing this duty, the veterans' burial supervisor shall ensure that the desires of the veteran's personal representative or heirs are not violated.

(3) The burial may not be made in any burial grounds or cemetery or in any portion of any burial grounds or cemetery used exclusively for the burial of pauper dead.

(4) A sum not to exceed $250 to defer burial expenses must be paid by the county commissioners of the county in which the veteran was a bona fide resident at the time of death.

(5) The burial benefits are not available in the case of any veteran whose personal representative or heirs waive the benefits.

(6) Whenever burial is of a resident of a Montana veterans' home, a sum not to exceed $250 to defer burial expenses must be paid by the county commissioners of the county in which the veteran resided prior to admittance to a Montana veterans' home.

(7) If a veteran dies while temporarily absent from the state or county of residence, the provisions of this section apply and the burial expenses not exceeding the amount specified in this section must be paid in the same manner as provided in this section.

(8) Whenever a veteran dies at any public institution of the state of Montana, other than a Montana veterans' home, and burial for any cause is not made in the county of the former residence of the veteran, the officers of the state institution shall provide the proper burial prescribed in this section. The reimbursement for the expense of each burial may not exceed $250. The expense must be paid by the county in which the veteran resided at the time of entry into the institution.

(9) A burial may not be covered by any special or standing contract whereby the cost of burial is reduced below the maximum amount fixed in this section, to the disparagement of proper interment.

(10) The veterans' burial supervisor shall, upon request of the deceased veteran's next of kin or guardian, assist in applying to the proper authority for a suitable headstone, as provided by act of congress, and in placing the headstone on the veteran's grave. A sum not exceeding $70 for the shipping and raising of the headstone must be paid by the county commissioners of the county in which the veteran was a resident at the time of death. The expense must be audited and paid as provided in this section for burial expenses.

(11) The county treasurer may withhold an amount of the county total monthly remittance to the state treasurer equal to the actual cost paid, up to $40, for the shipping and raising of each headstone.

History: En. Sec. 1, Ch. 39, L. 1903; re-en. Sec. 2065, Rev. C. 1907; amd. Sec. 1, Ch. 89, L. 1909; amd. Sec. 1, Ch. 109, L. 1911; amd. Sec. 1, Ch. 178, L. 1919; amd. Sec. 1, Ch. 194, L. 1921; re-en. Sec. 4536, R.C.M. 1921; amd. Sec. 1, Ch. 181, L. 1931; re-en. Sec. 4536, R.C.M. 1935; amd. Sec. 1, Ch. 163, L. 1937; amd. Sec. 1, Ch. 52, L. 1939; amd. Sec. 1, Ch. 25, L. 1945; amd. Sec. 1, Ch. 310, L. 1967; amd. Sec. 1, Ch. 96, L. 1969; amd. Sec. 34, Ch. 535, L. 1975; amd. Sec. 2, Ch. 49, L. 1977; R.C.M. 1947, 71-120; amd. Sec. 4, Ch. 609, L. 1989; amd. Sec. 2, Ch. 70, L. 1991; amd. Sec. 1, Ch. 45, L. 1995.

Compiler's Comments

1995 Amendment: Chapter 45 in (10), in second sentence, increased amount payable for shipping and raising of a veteran's headstone from $30 to $70; inserted (11) allowing a County Treasurer to withhold up to $40 for the shipping and raising of each headstone; and made minor changes in style. Amendment effective July 1, 1995.

Cross-References

Cemetery services, Title 7, ch. 35.

10-2-502. County of residence to pay expense. The expenses of such burial shall be paid by the county in which the veteran dies or, if death occurs while in service, the county of his last residency. But if the veteran has a residence in another county in this state than the one paying the expenses, the county of his residence shall refund the money advanced by the county where he died. The claimant shall be a relative or guardian unless otherwise directed. Expenses of such funeral shall be audited and paid as other expenses are audited and paid by the county.

History: En. Sec. 2, Ch. 39, L. 1903; re-en. Sec. 2066, Rev. C. 1907; re-en. Sec. 4537, R.C.M. 1921; re-en. Sec. 4537, R.C.M. 1935; amd. Sec. 2, Ch. 310, L. 1967; R.C.M. 1947, 71-121; amd. Sec. 7, Ch. 609, L. 1989.

10-2-503. Report of actions and expenses by burial supervisor. It is the duty of the person appointed as provided in 10-2-501 to cause the veteran to be buried as provided in this part, and he shall immediately report his action to the clerk of the board of county commissioners, setting forth all the facts, together with the veteran's name and rank, the last command to which the veteran belonged, so far as is known, the date of death, the exact place of burial, and an itemized statement of the expenses incurred by reason of the burial. The board of county commissioners may direct that additional information be kept in the book required to be kept by the clerk of the board of county commissioners by 10-2-504.

History: En. Sec. 3, Ch. 39, L. 1903; re-en. Sec. 2067, Rev. C. 1907; amd. Sec. 1, Ch. 109, L. 1911; re-en. Sec. 4538, R.C.M. 1921; re-en. Sec. 4538, R.C.M. 1935; amd. Sec. 3, Ch. 310, L. 1967; R.C.M. 1947, 71-122; amd. Sec. 7, Ch. 609, L. 1989; amd. Sec. 3, Ch. 70, L. 1991.

10-2-504. Duty of clerk. It is the duty of the clerk of the board of county commissioners, upon receiving the report and statement of expenses, to transcribe in a book to be kept for that purpose all the facts contained in the report concerning the veteran.

History: En. Sec. 4, Ch. 39, L. 1903; re-en. Sec. 2068, Rev. C. 1907; re-en. Sec. 4539, R.C.M. 1921; re-en. Sec. 4539, R.C.M. 1935; amd. Sec. 1, Ch. 146, L. 1963; amd. Sec. 4, Ch. 310, L. 1967; R.C.M. 1947, 71-123; amd. Sec. 1, Ch. 442, L. 1979; amd. Sec. 7, Ch. 609, L. 1989; amd. Sec. 4, Ch. 70, L. 1991.

10-2-505. No compensation for burial supervisor. The person appointed as provided in 10-2-501 shall not receive any compensation for any duties he may perform in compliance with this part.

History: **En. Sec. 5, Ch. 39, L. 1903; re-en. Sec. 2069, Rev. C. 1907; re-en. Sec. 4540, R.C.M. 1921; re-en. Sec. 4540, R.C.M. 1935; R.C.M. 1947, 71-124.**

10-2-506. Not to apply to nonresidents. This part shall not apply to veterans who, at the time of their death, shall not have a legal residence within this state.

History: **En. Sec. 6, Ch. 39, L. 1903; re-en. Sec. 2070, Rev. C. 1907; re-en. Sec. 4541, R.C.M. 1921; amd. Sec. 1, Ch. 125, L. 1931; re-en. Sec. 4541, R.C.M. 1935; amd. Sec. 5, Ch. 310, L. 1967; R.C.M. 1947, 71-125; amd. Sec. 7, Ch. 609, L. 1989.**

Cross-References

Rules for determining residence, 1-1-215.

Part 6

State Veterans' Cemetery

10-2-601. State veterans' cemetery. The department of military affairs shall establish a state veterans' cemetery. The cemetery must be located at Fort William Henry Harrison, Lewis and Clark County, Montana.

History: **En. Sec. 1, Ch. 734, L. 1985.**

Cross-References

Jurisdiction over Veterans Administration center, 2-1-212.

10-2-602. Rulemaking authority. The department of military affairs shall adopt rules that provide criteria for determining which veterans may be buried in the state veterans' cemetery. The criteria must include, but are not limited to, discharge status and length of service.

History: **En. Sec. 2, Ch. 734, L. 1985.**

Cross-References

Adoption and publication of rules, Title 2, ch. 4, part 3.

10-2-603. Special revenue account — use of funds — solicitation. (1) There is an account in the special revenue fund to the credit of the department of military affairs for the state veterans' cemetery.

(2) Plot allowances, donations, and, as provided in 61-3-332, revenue from veterans' license plate sales must be deposited into the account.

(3) As appropriated by the legislature, money in the account may be used only for the construction, maintenance, operation, and administration of the state veterans' cemetery.

(4) The department of military affairs may solicit veterans' license plate sales and donations on behalf of the state veterans' cemetery.

History: **En. Sec. 1, Ch. 159, L. 1993.**

CHAPTER 3

DISASTER AND EMERGENCY SERVICES

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Chapter Cross-References

Department of Military Affairs created, 2-15-1201.

Division of Disaster and Emergency Services created, 2-15-1204.

Closure of banks during emergency, 32-1-561, et seq.

Nuclear facilities — evacuation and emergency medical aid plans, 75-20-1204.

Noxious weed emergency, Title 80, ch. 7, part 8.

Energy emergency laws to supplement civil defense laws, 90-4-317.

Western Interstate Nuclear Compact, Title 90, ch. 5, part 2.

Part 1
General Provisions and Administration

10-3-101. Declaration of policy. Because of the existing and increasing possibility of the occurrence of disasters or emergencies of unprecedented size and destructiveness resulting from enemy attack, sabotage, or other hostile action and natural disasters and in order to provide for prompt and timely reaction to an emergency or disaster, to insure that preparation of this state will be adequate to deal with disasters or emergencies, and generally to provide for the common defense and to protect the public peace, health, and safety and to preserve the lives and property of the people of this state, it is declared to be necessary to:

(1) authorize the creation of local or interjurisdictional organizations for disaster and emergency services in the political subdivisions of this state;

(2) reduce vulnerability of people and communities of this state to damage, injury, and loss of life and property resulting from natural or man-made disasters;

(3) provide a setting conducive to the rapid and orderly start of restoration and rehabilitation of persons and property affected by disasters;

(4) clarify and strengthen the roles of the governor, state agencies, and local governments in prevention of, preparation for, response to, and recovery from emergencies and disasters;

(5) authorize and provide for cooperation in disaster prevention, preparedness, response, and recovery;

(6) authorize and provide for coordination of activities relating to disaster prevention, preparedness, response, and recovery by agencies and officers of this state and similar state-local, interstate, federal-state, and foreign activities in which the state and its political subdivisions may participate;

(7) provide an emergency and disaster management system embodying all aspects of emergency or disaster prevention, preparedness, response, and recovery;

(8) assist in prevention of disasters caused or aggravated by inadequate planning for public and private facilities and land use;

(9) supplement, without in any way limiting, authority conferred by previous statutes of this state and increase the capability of the state, local, and interjurisdictional disaster and emergency services agencies to perform disaster and emergency services; and

(10) authorize the payment of extraordinary costs and the temporary hiring, with statutorily appropriated funds under 10-3-312, of professional and technical personnel to meet the state's responsibilities in providing assistance in the response to, recovery from, and mitigation of disasters in either state or federal emergency or disaster declarations.

History: En. Sec. 2, Ch. 218, L. 1951; amd. Sec. 1, Ch. 220, L. 1953; Sec. 77-1302, R.C.M. 1947; amd. and redes. 77-2301 by Sec. 8, Ch. 94, L. 1974; amd. Sec. 2, Ch. 335, L. 1977; R.C.M. 1947, 77-2301; amd. Sec. 1, Ch. 71, L. 1987; amd. Sec. 1, Ch. 595, L. 1989.

Cross-References

Legislative findings and intent concerning energy emergency, 90-4-301.

10-3-102. Limitations. Nothing in parts 1 through 4 of this chapter may be construed to give any state, local, or interjurisdictional agency or public official authority to:

(1) interfere with the course or conduct of a labor dispute, except that actions otherwise authorized by parts 1 through 4 of this chapter or other laws may be taken when necessary to forestall or mitigate imminent or existing danger to public health or safety;

(2) interfere with dissemination of news or comment on public affairs; but any communications facility or organization (including but not limited to radio and television stations, wire services, and newspapers) may be required to transmit or print public service messages furnishing information or instructions in connection with an emergency or disaster;

(3) affect the jurisdiction or responsibilities of police forces, firefighting forces, units of the armed forces of the United States, or of any personnel thereof, when on active duty; but state, local, and interjurisdictional disaster and emergency plans shall place reliance upon the forces available for performance of functions related to emergencies and disasters; or

(4) limit, modify, or abridge the authority of the governor to proclaim martial law or exercise any other powers vested in him under the constitution, statutes, or common law of this state independent of or in conjunction with any provisions of parts 1 through 4 of this chapter.

History: En. 77-2301.2 by Sec. 3, Ch. 335, L. 1977; R.C.M. 1947, 77-2301.2.

Cross-References

Civilian control of the military, Art. II, sec. 32, Mont. Const.

Authority of Governor to proclaim martial rule, 10-1-106.

10-3-103. Definitions. As used in parts 1 through 4 of this chapter, the following definitions apply:

(1) "Civil defense" means the nuclear preparedness functions and responsibilities of disaster and emergency services.

(2) "Department" means the department of military affairs.

(3) "Disaster" means the occurrence or imminent threat of widespread or severe damage, injury, or loss of life or property resulting from any natural or man-made cause, including tornadoes, windstorms, snowstorms, wind-driven water, high water, floods, wave action, earthquakes, landslides, mudslides, volcanic action, fires, explosions, air or water contamination requiring emergency action to avert danger or damage, blight, droughts, infestations, riots, sabotage, hostile military or paramilitary action, disruption of state services, or accidents involving radiation byproducts or other hazardous materials.

(4) "Disaster and emergency services" means the preparation for and the carrying out of disaster and emergency functions and responsibilities, other than those for which military forces or other state or federal agencies are primarily responsible, to mitigate, prepare for, respond to, and recover from injury and damage resulting from emergencies or disasters.

(5) "Division" means the division of disaster and emergency services of the department.

(6) "Emergency" means the imminent threat of a disaster causing immediate peril to life or property that timely action can avert or minimize.

(7) "Incident" means an event or occurrence, caused by either an individual or by natural phenomena, requiring action by disaster and emergency services personnel to prevent or minimize loss of life or damage to property or natural resources. The term includes the imminent threat of an emergency, but the term does not include a state of emergency or disaster declared by the governor pursuant to 10-3-302 or 10-3-303.

(8) "Political subdivision" means any county, city, town, or other legally constituted unit of local government in this state.

(9) "Principal executive officer" means the mayor, presiding officer of the county commissioners, or other chief executive officer of a political subdivision.

(10) "Temporary housing" means unoccupied habitable dwellings, suitable rental housing, mobile homes, or other readily fabricated dwellings.

History: En. Sec. 3, Ch. 218, L. 1951; amd. Sec. 2, Ch. 220, L. 1953; Sec. 77-1303, R.C.M. 1947; amd. and redes. 77-2302 by Sec. 9, Ch. 94, L. 1974; amd. Sec. 4, Ch. 335, L. 1977; R.C.M. 1947, 77-2302; amd. Sec. 4, Ch. 430, L. 1983; amd. Sec. 2, Ch. 71, L. 1987; amd. Sec. 1, Ch. 176, L. 1995.

Compiler's Comments

1995 Amendment: Chapter 176 inserted definition of incident; and made minor changes in style.

10-3-104. General authority of governor. (1) The governor is responsible for carrying out parts 1 through 4 of this chapter.

(2) In addition to any other powers conferred upon the governor by law, the governor may:

(a) suspend the provisions of any regulatory statute prescribing the procedures for conduct of state business or orders or rules of any state agency if the strict compliance with the provisions of any statute, order, or rule would in any way prevent, hinder, or delay necessary action in coping with the emergency or disaster;

(b) direct and compel the evacuation of all or part of the population from an emergency or disaster area within the state if the governor considers this action necessary for the preservation of life or other disaster mitigation, response, or recovery;

(c) control ingress and egress to and from an incident or emergency or disaster area, the movement of persons within the area, and the occupancy of premises within the area.

(3) Under this section, the governor may issue executive orders, proclamations, and regulations and amend and rescind them. All executive orders or proclamations declaring or terminating a state of emergency or disaster must indicate the nature of the emergency or disaster, the area threatened, and the conditions that have brought about the declaration or that make possible termination of the state of emergency or disaster.

History: En. Sec. 6, Ch. 218, L. 1951; Sec. 77-1306, R.C.M. 1947; amd. and redes. 77-2304 by Sec. 11, Ch. 94, L. 1974; amd. Sec. 6, Ch. 335, L. 1977; R.C.M. 1947, 77-2304(1) thru (3); amd. Sec. 2, Ch. 176, L. 1995.

Compiler's Comments

1995 Amendment: Chapter 176 in (2)(c) inserted "incident or"; and made minor changes in style.

Cross-References

Governor as commander-in-chief of militia, Art. VI, sec. 13, Mont. Const.

Call of forces, when authorized, Art. VI, sec. 13, Mont. Const.

Authority of Governor to proclaim martial rule, 10-1-106.

Extension of enlistments by Governor, 10-1-303.

Governor as commander-in-chief during emergencies, 10-3-305.

Governor's emergency powers and duties generally, 10-3-305.

Governor's proclamation of emergency, 10-3-505.

Closure of hunting and fishing during fire emergency, 87-3-106.

Powers of Governor during energy emergency, 90-4-309 through 90-4-318.

Governor to appoint board members of Western Interstate Nuclear Compact, 90-5-202.

10-3-105. Division of disaster and emergency services — duties. (1) A division of disaster and emergency services is established in the department. The division must have an administrator and other professional, technical, secretarial, and clerical employees as necessary for the performance of its functions.

(2) The department through the division of disaster and emergency services is responsible to the governor for carrying out the planning and program for disaster and emergency services of this state.

(3) The division shall prepare and maintain a comprehensive plan and program for disaster and emergency services of this state. The plan and program must be coordinated with the disaster and emergency plans and programs of the federal government, other states, political subdivisions, and Canada to the fullest extent possible.

(4) The division shall:

(a) coordinate the preparation of the plan and program for disaster and emergency services with the political subdivisions of this state;

(b) coordinate disaster and emergency prevention and preparation activities of all departments, agencies, and organizations within the state;

(c) advise and assist the political subdivisions of this state in executing their disaster and emergency services responsibilities;

(d) make recommendations on the formation of interjurisdictional disaster and emergency services areas when individual political subdivisions are unable to fully and adequately mount an effective local program because of limitations of funding, personnel, or other reasons;

(e) make surveys of industries, resources, and facilities within the state, both public and private, as are necessary to carry out the purposes of parts 1 through 4 of this chapter;

(f) periodically review local and interjurisdictional plans and programs for disaster and emergency services;

(g) develop or assist in the development of mutual aid plans and agreements between the federal government, other states, and Canada and among the political subdivisions of this state;

(h) plan and make arrangements for the availability and use of any private facilities, services, and property and, if necessary and if in fact used, provide for payment for use under terms and conditions agreed upon;

(i) institute training and public information programs and take all other preparatory steps, including the partial or full mobilization of disaster and emergency services organizations in advance of an actual incident, emergency, or disaster, to ensure the availability of adequately trained and equipped personnel in time of an incident, emergency, or disaster;

(j) direct emergency response and disaster preparation activities as authorized by the governor;

(k) direct disaster response and recovery activities as authorized by the governor;

(l) prepare, for issuance by the governor, executive orders or proclamations as necessary or appropriate in coping with incidents, emergencies, and disasters;

(m) maintain liaison with and cooperate with disaster and emergency services agencies and organizations of the federal government, other states, and Canada in achieving any purpose of parts 1 through 4 of this chapter and in implementing programs for disaster prevention, preparation, response, and recovery; and

(n) assume any additional authority, duties, and responsibilities authorized by parts 1 through 4 of this chapter as may be prescribed by the governor.

History: (1), (3), (4)En. Sec. 7, Ch. 335, L. 1977; Sec. 77-2305.1, R.C.M. 1947; (2)En. Sec. 4, Ch. 218, L. 1951; amd. Sec. 3, Ch. 220, L. 1953; amd. Sec. 7, Ch. 237, L. 1967; Sec. 77-1304, R.C.M. 1947; amd. and redes. 77-2303 by Sec. 10, Ch. 94, L. 1974; amd. Sec. 5, Ch. 335, L. 1977; Sec. 77-2303, R.C.M. 1947; R.C.M. 1947, 77-2303, 77-2305.1(part); amd. Sec. 5, Ch. 430, L. 1983; amd. Sec. 3, Ch. 176, L. 1995.

Compiler's Comments

1995 Amendment: Chapter 176 in (4)(i), in two places, and in (4)(l) inserted references to an incident or incidents; and made minor changes in style.

Cross-References

Department of Military Affairs created, 2-15-1201.

Division created, 2-15-1204.

Department power to authorize construction on federal land, 18-2-102.

10-3-106. Communications. (1) The division shall coordinate whatever means exist for rapid and efficient communications in time of emergency or disaster.

(2) The division shall, in cooperation with the division of communications, department of administration, consider the desirability of supplementing communications resources or of integrating them into a comprehensive state or state-federal telecommunications or other communications system or network.

(3) The division shall, in cooperation with the division of communications and local political subdivisions, evaluate the possibility of multipurpose use of communications systems or networks for general state and local governmental purposes.

(4) The division shall assist political subdivisions in the orderly development of telecommunications systems complementary to the state telecommunications system or network.

History: En. 77-2307.4 by Sec. 12, Ch. 335, L. 1977; R.C.M. 1947, 77-2307.4.

Cross-References

State government communication systems, Title 2, ch. 17, part 3.

Cooperation with local government, 10-3-107, 10-3-202.

Cooperation with other agencies, 10-3-201.

10-3-107. National defense highway plans. The department of military affairs shall:

(1) cooperate with the agencies of this and other states and of the federal government which are connected with national defense in the formulation and execution of plans for the rapid and safe movement over the highways of troops, vehicles of a military nature, and materials affecting the national defense;

(2) coordinate the activities of the department of transportation and the department of justice in a manner which will best serve to carry out any such plan for the rapid and safe movement of troops, vehicles, and materials;

(3) solicit the cooperation of officials of the various political subdivisions of the state in the proper execution of these plans.

History: (1)En. Sec. 2, Ch. 82, L. 1941; amd. Sec. 3, Ch. 94, L. 1953; amd. Sec. 1, Ch. 94, L. 1974; Sec. 32-1702, R.C.M. 1947; (2)En. Sec. 3, Ch. 82, L. 1941; amd. Sec. 4, Ch. 94, L. 1953; amd. Sec. 2, Ch. 94, L. 1974; Sec. 32-1703, R.C.M. 1947; R.C.M. 1947, 32-1702, 32-1703; amd. Sec. 6, Ch. 430, L. 1983; amd. Sec. 3, Ch. 512, L. 1991.

Cross-References

Highway traffic safety program, Title 61, ch. 2, part 1.

10-3-108 through 10-3-110 reserved.

10-3-111. Personnel immune from liability. (1) Neither the state nor any political subdivision of the state nor the agents or representatives of the state or any political subdivision of the state are liable for personal injury or property damage sustained by any person appointed or acting as a volunteer civilian defense worker or member of any agency engaged in civilian defense activity during an incident, disaster, or emergency. This section does not affect the right of any person to receive benefits or compensation to which the person might otherwise be entitled under the workers' compensation law or any pension law or any act of congress.

(2) Neither the state nor any political subdivision of the state nor, except in cases of willful misconduct, gross negligence, or bad faith, the employees, agents, or representatives of the state or any political subdivision of the state nor any volunteer or auxiliary civilian defense worker or member of any agency engaged in civilian defense activity during an incident, disaster, or emergency nor the owners of facilities used for civil defense shelters, pursuant to a fallout shelter license or privilege agreement and while complying with or reasonably attempting to comply with parts 1 through 4 of this chapter or any order or rule promulgated under the provisions of parts 1 through 4 of this chapter or pursuant to any ordinance relating to blackout or other precautionary measures enacted by any political subdivisions of the state, are liable for the death of or injury to persons or for damage to property as a result of any such activity.

History: En. Sec. 10, Ch. 218, L. 1951; Sec. 77-1310, R.C.M. 1947; amd. and redes. 77-2308 by Sec. 15, Ch. 94, L. 1974; rep. Sec. 15, Ch. 49, L. 1977; re-en. Sec. 2, Ch. 73, L. 1977; R.C.M. 1947, 77-2308; amd. Sec. 4, Ch. 176, L. 1995.

Compiler's Comments

1995 Amendment: Chapter 176 in first sentence of (1) and in (2) inserted "incident" and substituted "emergency" for "catastrophe"; and made minor changes in style.

Cross-References

Liability of governmental entities generally, Title 2, ch. 9.

Attorney's fees for militia members, 10-1-601.

Limitations on liability for emergency care, 27-1-714.

Limitations on liability of health professionals for emergency care, 41-1-405.

10-3-112. Employment requirements for personnel — political involvement of organizations prohibited. (1) A person may not be employed in any disaster and emergency services organization established under parts 1 through 4 of this chapter who advocates a change by force or violence in the constitutional form of the government of the United States or in this state or the overthrow of any government in the United States by force or violence or who has been convicted of or is under indictment or information charging any subversive act against the United States. Each person who is appointed to serve in an organization for disaster and emergency services shall, before entering upon his duties, take an oath, in writing, before a person authorized to administer oaths in this state, which oath shall be substantially as follows:

"I ...., swear (or affirm) that I will support and defend The Constitution of the United States and The Constitution of the State of Montana against all enemies, foreign and domestic; that I will bear true faith and allegiance to the same; that I take this obligation freely, without any mental reservation or purpose of evasion; and that I will well and faithfully discharge the duties of the office on which I am about to enter. So help me, God."

(2) An organization for disaster and emergency services established under this chapter may not participate in any form of political activity, nor may it be employed directly or indirectly for political purposes.

History: (1)En. Sec. 13, Ch. 218, L. 1951; Sec. 77-1313, R.C.M. 1947; amd. and redes. 77-2311 by Sec. 18, Ch. 94, L. 1974; amd. Sec. 15, Ch. 335, L. 1977; Sec. 77-2311, R.C.M. 1947; (2)En. Sec. 12, Ch. 218, L. 1951; Sec. 77-1312, R.C.M. 1947; amd. and redes. 77-2310 by Sec. 17, Ch. 94, L. 1974; amd. Sec. 14, Ch. 335, L. 1977; Sec. 77-2310, R.C.M. 1947; R.C.M. 1947, 77-2310, 77-2311.

Cross-References

Oath of officers, 10-1-202.
Oath of enlistment, 10-1-302.
Discrimination by state, 49-2-308.

10-3-113. Identification — civil defense symbol. Disaster and emergency services organizations and personnel may continue to identify themselves by the use of the civil defense symbol.

History: En. 77-2315 by Sec. 19, Ch. 335, L. 1977; R.C.M. 1947, 77-2315.

Cross-References

"Civil defense" defined, 10-3-103.

Part 2

Intergovernmental Cooperation

10-3-201. Local and interjurisdictional emergency and disaster agencies and services. (1) Each political subdivision within this state shall designate a local or interjurisdictional agency responsible for emergency and disaster prevention and preparedness and coordination of response and recovery.

(2) The local or interjurisdictional disaster and emergency services agency shall receive assistance from the division in emergency and disaster prevention, preparedness, response, and recovery to the extent of the division's authority and responsibility.

(3) Each political subdivision shall adhere to the provisions of parts 1 through 4 of this chapter and the state disaster and emergency plan and program regarding the structure and responsibilities of the local or interjurisdictional disaster and emergency service agencies and their relationship to the division.

(4) The principal executive officer of each political subdivision shall notify the division of the manner by which the political subdivision is providing or

securing emergency and disaster planning and services, identify the person who heads the agency from which planning and services are obtained, and furnish additional information as the division requires.

History: En. 77-2307.1 by Sec. 8, Ch. 335, L. 1977; R.C.M. 1947, 77-2307.1(1) thru (4).

Cross-References

Authority of principal executive officer, 10-3-406.

10-3-202. Mutual aid — cooperation. (1) Political subdivisions shall be encouraged and assisted by the division to conclude mutual aid arrangements with other public and private agencies within this state for reciprocal aid and assistance in coping with emergencies and disasters.

(2) In reviewing disaster and emergency plans and programs of political subdivisions, the division shall consider whether they contain adequate provisions for the reciprocal mutual aid.

(3) Local and interjurisdictional disaster and emergency agencies may assist in negotiation of reciprocal mutual aid agreements between the governor and the adjoining states (including foreign states or provinces) or political subdivisions thereof and shall carry out arrangements of any such agreements relating to the local and political subdivision.

(4) In providing assistance under parts 1 through 4 of this chapter, state departments and agencies shall cooperate to the fullest extent possible with each other and with local governments and relief agencies such as the American national red cross, but nothing contained in parts 1 through 4 of this chapter lists or in any way affects the responsibilities of the American national red cross under the act approved January 5, 1905 (33 Stat. 559), as amended.

History: (1) thru (3)En. Sec. 8, Ch. 218, L. 1951; Sec. 77-1308, R.C.M. 1947; amd. and redes. 77-2306 by Sec. 13, Ch. 94, L. 1974; amd. Sec. 13, Ch. 49, L. 1977; amd. Sec. 10, Ch. 335, L. 1977; Sec. 77-2306, R.C.M. 1947; (4)En. 77-2305.1 by Sec. 7, Ch. 335, L. 1977; Sec. 77-2305.1, R.C.M. 1947; R.C.M. 1947, 77-2305.1(5), 77-2306.

Cross-References

State disaster and emergency plan, 10-3-301.

10-3-203. Acceptance of services, gifts, grants, and loans. (1) Whenever the federal government or any agency or officer thereof or any person, firm, or corporation shall offer to the state, or through the state to any political subdivision thereof, services, equipment, supplies, materials, or funds by way of gift, grant, or loan for purposes of emergency or disaster services, the state, acting through the governor, or the political subdivision, acting through its executive officer or governing body, may accept the offer and upon the acceptance the governor of the state or executive officer or governing body of the political subdivision may authorize any officer of the state or of the political subdivision, as the case may be, to receive the services, equipment, supplies, materials, or funds on behalf of the state or such political subdivision and subject to the terms of the offer and the rules, if any, of the agency making the offer.

(2) The funds, items, and services set forth in subsection (1) are statutorily appropriated, as provided in 17-7-502, to the governor for the purposes set forth in subsection (1).

History: **En. Sec. 11, Ch. 218, L. 1951; Sec. 77-1311, R.C.M. 1947; amd. and redes. 77-2309 by Sec. 16, Ch. 94, L. 1974; amd. Sec. 13, Ch. 335, L. 1977; R.C.M. 1947, 77-2309; amd. Sec. 6, Ch. 703, L. 1985.**

Cross-References

Governor authorized to accept funds — designation of state agency, 17-3-105.

10-3-204. Intergovernmental arrangements. (1) This state enacts into law and enters into the interstate mutual aid compact with all states, as defined therein, which states have enacted or shall hereafter enact the compact in the form substantially contained in 10-3-207.

(2) The governor may enter into the compact with any state if he finds that joint action with the state is desirable in meeting common intergovernmental problems of emergency and disaster planning, prevention, response, and recovery.

(3) Nothing in subsections (1) and (2) may be construed to limit previous or future entry of this state into the interstate mutual aid compact.

(4) All interstate mutual aid compacts and other interstate agreements dealing with disaster and emergency services shall be reviewed and made current at intervals not to exceed 4 years.

(5) If a person holds a license, certificate, or other permit issued by any state or political subdivision thereof evidencing the meeting of qualifications for professional, mechanical, or other skills, the person may render aid involving that skill in this state to meet an emergency or disaster and this state shall give due recognition to the license, certificate, or other permit.

(6) When considered of mutual benefit, the governor may, subject to limitations of law, enter into intergovernmental arrangements with neighboring provinces of Canada for the purpose of exchanging disaster and emergency services.

History: **En. 77-2307.3 by Sec. 11, Ch. 335, L. 1977; R.C.M. 1947, 77-2307.3; amd. Sec. 1, Ch. 228, L. 1985.**

10-3-205. Authority to join interstate mutual aid compact — supplemental agreements. (1) The governor of the state of Montana is hereby authorized for and in the name of the state of Montana to join with other states in the interstate mutual aid compact.

(2) The governor of the state of Montana is hereby authorized to negotiate and execute such supplemental agreements as may be necessary and proper to fully carry into effect the terms and provisions of the interstate mutual aid compact as set forth in 10-3-207.

History: **(1)En. Sec. 2, Ch. 213, L. 1951; Sec. 77-1402, R.C.M. 1947; (2)En. Sec. 4, Ch. 213, L. 1951; Sec. 77-1404, R.C.M. 1947; R.C.M. 1947, 77-1402, 77-1404; amd. Sec. 2, Ch. 228, L. 1985.**

10-3-206. Repealed. Sec. 5, Ch. 228, L. 1985.

History: **En. Sec. 3, Ch. 213, L. 1951; R.C.M. 1947, 77-1403.**

10-3-207. Text of compact. The interstate mutual aid compact referred to in 10-3-204 and 10-3-205 reads as follows:

INTERSTATE MUTUAL AID COMPACT

Article I

The purpose of this compact is to provide voluntary assistance among participating states in responding to any disaster or imminent disaster that overextends the ability of local and state governments to reduce, counteract, or remove the danger. Assistance may include but is not limited to rescue, fire, police, medical, communication, and transportation services and facilities to cope with problems which require use of special equipment, trained personnel, or personnel in large numbers not locally available.

Article II

Article I, section 10, of the Constitution of the United States permits a state to enter into an agreement or compact with another state, subject to the consent of congress. Congress, through enactment of 50 U.S.C. 2281(g) and 2283 and the executive branch, by issuance of Executive Orders No. 10186 of December 1, 1950, encourages the states to enter into emergency, disaster, and civil defense mutual aid agreements or pacts.

Article III

It is agreed by participating states that the following conditions will guide implementation of the compact:

(1) Participating states through their designated officials are authorized to request and receive assistance from a participating state. Requests will be granted only if the requesting state is committed to the mitigation of the emergency and other resources are not immediately available.

(2) Requests for assistance may be verbal or in writing. If the request is made by other than written communication, it must be confirmed in writing as soon as practical after the request. A written request shall provide an itemization of equipment and operators, types of expertise, and personnel or other resources needed. Each request must be signed by an authorized official.

(3) Personnel and equipment of the aiding state made available to the requesting state shall, whenever possible, remain under the control and direction of the aiding state. The activities of personnel and equipment of the aiding state must be coordinated by the requesting state.

(4) An aiding state has the right to withdraw some or all of its personnel and equipment whenever the personnel and equipment are needed by that state. Notice of intention to withdraw should be communicated to the requesting state as soon as possible.

Article IV

(1) The requesting state shall reimburse the aiding state as soon as possible after the receipt by the requesting state of an itemized voucher requesting reimbursement of costs.

(2) Any state rendering aid pursuant to this compact must be reimbursed by the state receiving such aid for any damage to, loss of, or expense incurred in the operation of any equipment used in responding to a request for aid, and for the cost incurred in connection with such requests.

(3) Any state rendering aid pursuant to this compact must be reimbursed by the state receiving such aid for the cost of compensation and death benefits to injured officers, agents, or employees and their dependents or representatives if such officers, agents, or employees sustain injuries or are killed while rendering aid pursuant to this arrangement and such payments are made in the same manner and on the same terms as if the injury or death were sustained within the aiding state.

Article V

(1) All privileges and immunities from liability, exemptions from law, ordinances, and rules and all pension, disability relief, workers' compensation, and other benefits that apply to the activity of officers, agents, or employees when performing their respective functions within the territorial limits of their respective political subdivisions apply to them to the same extent while engaged in the performance of any of their functions and duties extraterritorially under the provisions of this compact.

(2) All privileges and immunities from liability, exemptions from law, ordinances, and rules and workers' compensation and other benefits that apply to duly enrolled or registered volunteers when performing their respective functions at the request of their state and within its territorial limits apply to the same extent while performing their functions extraterritorially under the provisions of this compact. Volunteers may include but are not limited to physicians, surgeons, nurses, dentists, structural engineers, and trained search and rescue volunteers.

(3) The signatory states, their political subdivisions, municipal corporations, and other public agencies shall hold harmless the corresponding entities and personnel thereof from the other state with respect to the acts and omissions of its own agents and employees that occur while providing assistance pursuant to the common plan.

(4) Nothing in this arrangement may be construed as repealing or impairing any existing interstate mutual aid agreements.

(5) Upon enactment of this compact by two or more states, and annually by each January 1 thereafter, the participating states will exchange with each other the names of officials designated to request and provide services under this arrangement. In accordance with the cooperative nature of this arrangement, it is permissible and desirable for the states to exchange operational procedures to be followed in requesting assistance and reimbursing expenses.

(6) This compact becomes effective and is binding upon the states so acting when it has been enacted into law by any two states. Thereafter, this compact becomes effective and binding as to any other state upon similar action by such state.

(7) This compact remains binding upon a party state until it enacts a law repealing the compact and providing for the sending of formal written notice of withdrawal from the compact to the appropriate officials of all other party states. An actual withdrawal may not take effect until the 30th consecutive day after the notice has been sent. Such withdrawal does not relieve the withdrawing state from its obligations assumed under this compact prior to the effective date of withdrawal.

History: En. Sec. 3, Ch. 228, L. 1985.

10-3-208. Rulemaking authority. The department of military affairs may adopt rules necessary to implement the interstate mutual aid compact.

History: En. Sec. 4, Ch. 228, L. 1985.

Cross-References

Adoption and publication of rules, Title 2, ch. 4, part 3.

Part 3

State Planning and Execution

10-3-301. State disaster and emergency plan. (1) The state disaster and emergency plan and program may provide for:

(a) prevention and minimization of injury and damage caused by disaster;

(b) prompt and efficient response to an incident, emergency, or disaster;

(c) emergency relief;

(d) identification of areas particularly vulnerable to disasters;

(e) recommendations for preventive and preparedness measures designed to eliminate or reduce disasters or their impact;

(f) organization of personnel and chains of command;

(g) coordination of federal, state, and local disaster and emergency activities; and

(h) other necessary matters.

(2) In preparing and maintaining the state disaster and emergency plan and program, the division may seek the advice and assistance of local government, business, labor, industry, agriculture, civic and volunteer organizations, and community leaders. In advising local and interjurisdictional agencies, the division may encourage them to seek advice from these sources.

History: En. 77-2305.1 by Sec. 7, Ch. 335, L. 1977; R.C.M. 1947, 77-2305.1(part); amd. Sec. 7, Ch. 430, L. 1983; amd. Sec. 5, Ch. 176, L. 1995.

Compiler's Comments

1995 Amendment: Chapter 176 in (1)(b) inserted "incident"; and made minor changes in style.

Cross-References

Energy supply emergencies — energy curtailment required, 90-4-307.

10-3-302. Declaration of emergency — effect and termination. (1) A state of emergency may be declared by the governor when he determines that an emergency as defined in 10-3-103 exists.

(2) An executive order or proclamation of a state of emergency shall activate the emergency response and disaster preparation aspects of the state disaster and emergency plan and program applicable to the political subdivision or area and be authority for the deployment and use of any forces to which the plans apply and for the distribution and use of any supplies, equipment, and materials and facilities assembled, stockpiled, or arranged to be made available pursuant to parts 1 through 4 of this chapter or any other provision of law pertaining to disasters and disaster-related emergencies.

(3) A state of emergency may not continue for longer than 20 days unless continuing conditions of the state of emergency exist, which shall be determined by a declaration of an emergency by the president of the United States or by a declaration of the legislature by joint resolution of continuing conditions of the state of emergency.

History: **En. Sec. 6, Ch. 218, L. 1951; Sec. 77-1306, R.C.M. 1947; amd. and redes. 77-2304 by Sec. 11, Ch. 94, L. 1974; amd. Sec. 6, Ch. 335, L. 1977; R.C.M. 1947, 77-2304(4).**

Cross-References

Authorization to transfer county funds for emergency relief, 7-31-2101.

Emergency powers of the Governor generally, 10-3-104.

Power of Governor to declare energy emergency, 90-4-310.

10-3-303. Declaration of disaster — effect and termination. (1) A state of disaster may be declared by the governor when he determines that a disaster has occurred.

(2) An executive order or proclamation of a state of disaster shall activate the disaster response and recovery aspects of the state disaster and emergency plan and program applicable to the political subdivision or area and be authority for the deployment and use of any forces to which the plans apply and for the distribution and use of any supplies, equipment, and materials and facilities assembled, stockpiled, or arranged to be made available pursuant to parts 1 through 4 of this chapter or any other provision of law pertaining to disaster and disaster-related emergencies.

(3) A state of disaster may not continue for longer than 30 days unless continuing conditions of the state of disaster exist, which shall be determined by a declaration of a major disaster by the president of the United States or by the declaration of the legislature by joint resolution of continuing conditions of the state of disaster.

(4) The governor shall terminate a state of emergency or disaster when:

(a) the emergency or disaster has passed;

(b) the emergency or disaster has been dealt with to the extent that emergency or disaster conditions no longer exist; or

(c) at any time the legislature terminates the state of emergency or disaster by joint resolution. However, after termination of the state of emergency or disaster, disaster and emergency services required as a result of the emergency or disaster may continue.

History: **En. Sec. 6, Ch. 218, L. 1951; Sec. 77-1306, R.C.M. 1947; amd. and redes. 77-2304 by Sec. 11, Ch. 94, L. 1974; amd. Sec. 6, Ch. 335, L. 1977; R.C.M. 1947, 77-2304(5), (6).**

Cross-References

Authorization to transfer county funds for emergency relief, 7-31-2101.

10-3-304. Dissemination. An executive order or proclamation issued under this part shall be disseminated promptly by means calculated to bring its contents to the attention of the general public. Unless the circumstances attendant upon the emergency or disaster prevent or impede it, the executive order or proclamation will be filed promptly with the division, the secretary of state, and clerk and recorders of the counties involved.

History: **En. Sec. 6, Ch. 218, L. 1951; Sec. 77-1306, R.C.M. 1947; amd. and redes. 77-2304 by Sec. 11, Ch. 94, L. 1974; amd. Sec. 6, Ch. 335, L. 1977; R.C.M. 1947, 77-2304(7).**

10-3-305. Governor commander-in-chief — duties. (1) During an incident and during a state of emergency or disaster, the governor is commander-in-chief of the militia and of all other forces available for incident, emergency, or disaster duty. To the greatest extent possible, the governor shall delegate or assign command authority by prior arrangement embodied in the state disaster and emergency plan and program and appropriate executive orders.

(2) The governor shall use the services and facilities of the existing officers and agencies of the state, and all officers and agencies shall cooperate with and extend their services and facilities to the governor as the governor may request in the carrying out of the purposes of parts 1 through 4 of this chapter.

History: En. Sec. 6, Ch. 218, L. 1951; Sec. 77-1306, R.C.M. 1947; amd. and redes. 77-2304 by Sec. 11, Ch. 94, L. 1974; amd. Sec. 6, Ch. 335, L. 1977; R.C.M. 1947, 77-2304(8), (9); amd. Sec. 6, Ch. 176, L. 1995.

Compiler's Comments

1995 Amendment: Chapter 176 in (1) inserted two references to an incident; and made minor changes in style.

Cross-References

Civilian control of military, Art. II, sec. 32, Mont. Const.

Governor as commander-in-chief of militia, Art. VI, sec. 13, Mont. Const.

Emergency powers of the Governor generally, 10-3-104.

10-3-306 through 10-3-309 reserved.

10-3-310. Incident response — authority — appropriation — expenditures — recovery — rules. (1) The governor may by executive order upon request of the local governing body or its authorized agent activate that part of the state disaster and emergency plan pertaining to incident response. The order may be issued for any year, for any part of a year, or upon occurrence of an incident.

(2) Upon approval of an executive order pursuant to this section:

(a) that part of the state disaster and emergency plan pertaining to incidents becomes effective;

(b) the division may use any of the resources usable by the division during a state of emergency or disaster to respond to the incident; and

(c) there is statutorily appropriated, as provided in 17-7-502, to the office of the governor, and the governor is authorized to expend from the general fund an amount not to exceed $10,000 per incident and not to exceed $100,000 for incidents in a biennium.

(3) The governor may authorize the incurring of liabilities and expenses to be paid as other claims against the state from the general fund, in the amount necessary, upon activation of the incident response portion of the state disaster and emergency plan. Money appropriated by this section may be used only for incident response costs of the state and may not be used to reimburse a local government for incident response costs incurred by that local government.

(4) In the event of recovery of money expended pursuant to this section, the spending authority must be reinstated to the level reflecting the recovery.

(5) The department may adopt rules to implement this section.

History: En. Sec. 8, Ch. 176, L. 1995.

10-3-311. Emergency or disaster expenditures — restrictions. (1) The governor may authorize the incurring of liabilities and expenses to be paid as other claims against the state from the general fund, in the amount necessary, when an emergency or disaster justifies the expenditure and is declared by the governor, to meet contingencies and needs arising from an emergency or disaster, as defined in 10-3-103, which results in damage to the works, buildings, or property of the state or any political subdivision thereof or which menaces the health, welfare, safety, lives, or property of any considerable number of persons in any county or community of the state, upon demonstration by the political jurisdiction that:

(a) such political jurisdiction has exhausted all available emergency levies;

(b) the emergency is beyond the financial capability of the political jurisdiction to respond and for which no appropriation in the affected fund is available in sufficient amount to meet the emergency or disaster; or

(c) federal funds available for such emergency or disaster require either matching state funds or specific expenditures prior to eligibility for assistance under federal laws.

(2) No expenditures for flood-related damages may be made to assist a political subdivision that is sanctioned because it has flood hazard areas identified under the national flood insurance program, parts 59 through 77 of 44 C.F.R., and does not have in effect adequate regulations for such areas or has failed to enforce such regulations as required by the national flood insurance program.

(3) The governor is charged with the implementation of the program.

(4) The administration and development of rules for implementation of this section must be promulgated by the department.

History: (1)En. Sec. 1, Ch. 409, L. 1971; amd. Sec. 19, Ch. 577, L. 1977; Sec. 79-2501, R.C.M. 1947; (2), (3)En. Sec. 3, Ch. 409, L. 1971; Sec. 79-2503, R.C.M. 1947; R.C.M. 1947, 79-2501, 79-2503; amd. Sec. 1, Ch. 216, L. 1981; amd. Sec. 8, Ch. 430, L. 1983; amd. Sec. 1, Ch. 111, L. 1985; amd. Sec. 3, Ch. 71, L. 1987.

Cross-References

Adoption and publication of rules, Title 2, ch. 4, part 3.

Adoption and levy of emergency budget by Board of County Commissioners, 7-6-2341 through 7-6-2345.

Adoption and levy of emergency budget by City Council or Commission, 7-6-4251 through 7-6-4255.

Authorization to transfer county funds for emergency relief, 7-31-2101.

Levying of emergency taxes by city and county, 10-3-405.

Adoption and levy of emergency budget by school district trustees, 20-9-161 through 20-9-166.

Energy emergency expenditures authorized, 90-4-318.

10-3-312. Maximum expenditure by governor — appropriation. (1) (a) Whenever an emergency or disaster is declared by the governor, there is statutorily appropriated to the office of the governor, as provided in 17-7-502, and the governor is authorized to expend from the general fund, an amount not to exceed $2 million in any biennium, minus any amount appropriated pursuant to 10-3-310 in the same biennium.

(b) Whenever an emergency or disaster due to fire is declared by the governor, there is statutorily appropriated to the office of the governor, as provided in 17-7-502, and the governor is authorized to expend from the general fund, an amount not to exceed $10 million in any biennium. The amount appropriated in this subsection (b) may be combined with the amount appropriated in subsection (1)(a) for an emergency or disaster due to fire.

(2) In the event of the recovery of money expended under this section, the spending authority must be reinstated to a level reflecting the recovery.

(3) If a disaster is declared by the president of the United States, there is statutorily appropriated to the office of the governor, as provided in 17-7-502, and the governor is authorized to expend from the general fund, an amount

not to exceed $500,000 during the biennium to meet the state's share of the individual and family grant programs as provided in 42 U.S.C. 5178.

History: En. Sec. 2, Ch. 409, L. 1971; R.C.M. 1947, 79-2502; amd. Sec. 1, Ch. 626, L. 1983; amd. Sec. 7, Ch. 703, L. 1985; amd. Sec. 2, Ch. 595, L. 1989; amd. Sec. 1, Ch. 256, L. 1991; amd. Sec. 1, Ch. 12, Sp. L. July 1992; amd. Sec. 7, Ch. 176, L. 1995; amd. Sec. 1, Ch. 401, L. 1995.

Compiler's Comments

1995 Amendments: Chapter 176 in (1)(a), at end, inserted "minus any amount appropriated pursuant to 10-3-310 in the same biennium"; and made minor changes in style.

Chapter 401 in (1)(b) increased amount from $3 million to $10 million; and made minor changes in style. Amendment effective April 13, 1995.

10-3-313. Temporary housing for disaster victims — site acquisition and preparation. (1) Whenever the governor has declared a state of emergency or state of disaster or the president has declared an emergency or a major disaster to exist in this state, the governor is authorized:

(a) to enter into purchase, lease, or other arrangements with any agency of the United States for temporary housing units to be occupied by emergency or disaster victims and to make such units available to any political subdivision of the state;

(b) to assist any political subdivision of this state which is the locus of temporary housing for emergency or disaster victims to acquire sites necessary for such temporary housing and to do all things required to prepare such site to receive and utilize temporary housing units by:

(i) advancing or lending funds available to the governor from any appropriation made for those purposes by the legislature or from any other source;

(ii) "passing through" funds made available for those purposes by any agency, public or private; or

(iii) becoming a copartner with the political subdivision for the execution and performance of any temporary housing project for emergency or disaster victims;

(c) under such regulations as he shall prescribe, to temporarily suspend or modify for not to exceed 60 days any public health, safety, zoning, or transportation (within or across the state) laws or regulations within this state when by proclamation he declares such suspension or modification essential to provide temporary housing for emergency or disaster victims.

(2) Any political subdivision of this state is expressly authorized to acquire, temporarily or permanently, by purchase, lease, or otherwise, sites required for installation of temporary housing units for emergency or disaster victims and to enter into whatever arrangements, including purchase of temporary housing units and payment of transportation charges, which are necessary to prepare or equip such sites to utilize the housing units.

(3) Nothing contained in parts 1 through 4 of this chapter shall be construed to limit the governor's authority to apply for, administer, and expend any grants, gifts, or payments in aid of emergency or disaster prevention, preparedness, response, or recovery.

History: En. 77-2312 by Sec. 16, Ch. 335, L. 1977; R.C.M. 1947, 77-2312.

10-3-314. Community disaster loans. Whenever, at the request of the governor, the president has declared a major disaster to exist in this state, the governor is authorized:

(1) upon his determination that a political subdivision of the state will suffer a substantial loss of tax and other revenues from an emergency or disaster and has demonstrated a need for financial assistance to perform its governmental functions, to apply to the federal government, on behalf of the political subdivision, for a loan. The proceeds are statutorily appropriated, as provided in 17-7-502, to the governor, who may receive and disburse the proceeds of any approved loan to any applicant political subdivision.

(2) to determine the amount needed by any applicant political subdivision to restore or resume its governmental functions and to certify the same to the federal government. However, no application amount may exceed 25% of the annual operating budget of the applicant for the fiscal year in which the emergency or disaster occurs.

(3) to recommend to the federal government, based upon his review, the cancellation of all or any part of repayment when, in the first 3 full fiscal years following the emergency or disaster, the revenues of the political subdivision are insufficient to meet its operating expenses, including additional emergency- or disaster-related expenses of a political subdivision operation character.

History: En. 77-2313 by Sec. 17, Ch. 335, L. 1977; R.C.M. 1947, 77-2313; amd. Sec. 8, Ch. 703, L. 1985.

10-3-315. Debris and wreckage removal in emergencies or disasters. (1) Whenever the governor has declared a state of emergency or state of disaster to exist under the laws of this state or the president, at the request of the governor, has declared a major disaster or emergency to exist in this state, the governor is authorized:

(a) notwithstanding any other provision of law, through the use of state departments or agencies or the use of any of the state's instrumentalities, to clear or remove from publicly or privately owned land or water debris and wreckage which may threaten public health or safety or public or private property in any state of emergency or state of disaster declared by the governor or major disaster as declared by the president;

(b) to accept funds from the federal government and utilize such funds to make grants to any political subdivision for the purpose of removing debris or wreckage from publicly or privately owned land or water.

(2) (a) Authority under this section shall not be exercised unless the affected political subdivision, corporation, organization, or individual shall first present an unconditional authorization for removal of such debris or wreckage from public and private property and, in the case of removal of debris or wreckage from private property, shall first agree to indemnify the state government against any claim arising from such removal.

(b) Whenever the governor provides for clearance of debris or wreckage pursuant to subsection (1)(a) or (1)(b), employees of the designated state agencies or individuals appointed by the state are authorized to enter upon private land or waters and perform any tasks necessary to the removal or clearance operation.

History: En. 77-2314 by Sec. 18, Ch. 335, L. 1977; R.C.M. 1947, 77-2314.

Cross-References

Liability of governmental entities generally, Title 2, ch. 9.

Attorney's fees for militia members, 10-1-601.

Part 4

Local and Interjurisdictional Planning and Execution

10-3-401. Local and interjurisdictional disaster and emergency plan — distribution. (1) Each political subdivision eligible to receive funds under this chapter shall prepare a local or interjurisdictional disaster and emergency plan and program covering the area for which that political subdivision is responsible. This plan shall be in accordance with and in support of the state disaster and emergency plan and program.

(2) The political subdivision shall prepare and distribute on behalf of the principal executive officers, in written form, a clear and complete statement of:

(a) the emergency responsibilities of all local agencies, if any, and officials;

(b) the disaster and emergency chain of command;

(c) local evacuation authority and responsibility; and

(d) local authority and responsibility for control of ingress and egress to and from an emergency or disaster area.

History: En. 77-2307.1 by Sec. 8, Ch. 335, L. 1977; R.C.M. 1947, 77-2307.1(5), (6); amd. Sec. 9, Ch. 430, L. 1983; amd. Sec. 4, Ch. 71, L. 1987.

Cross-References

Local and interjurisdictional emergency and disaster agencies and services, 10-3-201.

Mutual aid and cooperation, 10-3-202.

State disaster and emergency plan, 10-3-301.

10-3-402. Local emergency — declaration and termination. (1) A local emergency proclamation or disaster declaration may be issued only by the principal executive officer of a political subdivision.

(2) An emergency proclamation may be issued by order or resolution whenever the principal executive officer determines there is an emergency.

(3) An emergency proclamation may terminate with a disaster declaration or when the principal executive officer determines that the emergency no longer exists.

History: En. 77-2307.2 by Sec. 9, Ch. 335, L. 1977; R.C.M. 1947, 77-2307.2(1), (2); amd. Sec. 3, Ch. 595, L. 1989.

Cross-References

Adoption of emergency resolution by County Commissioners, 7-6-2341, 7-6-2342.

Adoption of emergency resolution by City Council or Commission, 7-6-4251, 7-6-4252.

Adoption of emergency resolution by school district trustees, 20-9-163.

10-3-403. Local disaster — declaration and termination. (1) A disaster declaration may be issued by order or resolution whenever the principal executive officer determines a disaster is occurring or has occurred.

(2) A disaster declaration may be terminated when the principal executive officer determines that the disaster conditions no longer exist.

History: En. 77-2307.2 by Sec. 9, Ch. 335, L. 1977; R.C.M. 1947, 77-2307.2(3); amd. Sec. 4, Ch. 595, L. 1989.

10-3-404. Contents of order — effect. (1) An order or resolution declaring or terminating a state of emergency or disaster shall indicate the nature of the emergency or disaster, the area threatened, and the conditions which have brought about the proclamation or declaration or which make possible termination of the state of emergency or disaster. Such order or resolution shall be disseminated promptly by means calculated to bring its contents to the attention of the general public and shall be filed promptly with the division and the agency charged with recording the official records of the political subdivision.

(2) The effect of an emergency proclamation or a disaster declaration is to activate applicable parts of the local or interjurisdictional disaster and emergency plan and program and to authorize the furnishing of aid and assistance in accordance with such plans and programs.

History: En. 77-2307.2 by Sec. 9, Ch. 335, L. 1977; R.C.M. 1947, 77-2307.2(4), (5); amd. Sec. 10, Ch. 430, L. 1983.

10-3-405. Levying emergency tax — disposition of surplus. (1) The governing body of the city or town or the governing body of the county, or both, shall estimate expenditures and levy an emergency millage to cover the expenditures. The millage levied by the governing body of the city or town shall not exceed 2 mills on the municipality's taxable valuation. The millage levied by the governing body of the county shall not exceed 2 mills on the taxable valuation of the county outside the municipalities.

(2) No expenditure of revenue received from the millage shall be made without approval of the appropriate levying body.

(3) An additional levy or levies may be made by the appropriate levying body, providing that the sum of the levies for emergencies as set forth in this section shall not exceed 2 mills in any one year.

(4) All levies under this section may be passed only by a unanimous vote of the appropriate body.

(5) Funds levied for an emergency and remaining when no further expenditures are necessary shall remain in a separate emergency fund and shall be used only for expenditures arising from future emergencies.

History: (1) thru (4)En. Sec. 5, Ch. 97, L. 1967; Sec. 11-4305, R.C.M. 1947; (5)En. Sec. 6, Ch. 97, L. 1967; Sec. 11-4306, R.C.M. 1947; R.C.M. 1947, 11-4305(1) thru (4), 11-4306; amd. Sec. 2, Ch. 216, L. 1981.

Cross-References

Procedure to make emergency expenditures by Board of County Commissioners, 7-6-2341 through 7-6-2345.

Procedure to make emergency expenditures by City Commission or Council, 7-6-4251 through 7-6-4255.

Authority of County Commissioners to transfer funds for emergency relief, 7-31-2101.

Emergency or disaster expenditures authorized by Governor, 10-3-311.

Procedure to make emergency expenditures by school district trustees, 20-9-161 through 20-9-166.

10-3-406. Authority of principal executive officer. Upon the declaration of an emergency or disaster under 10-3-402 or 10-3-403 and the issuance of an order as required by 10-3-404, the principal executive officer may:

(1) direct and compel the evacuation of all or part of the population from an emergency or disaster area within that political subdivision when necessary for the preservation of life or other disaster mitigation, response, or recovery; and

(2) control the ingress and egress to and from an emergency or disaster area, the movement of persons within the area, and the occupancy of premises therein.

History: En. Sec. 5, Ch. 71, L. 1987; amd. Sec. 5, Ch. 595, L. 1989.

Cross-References

Local and interjurisdictional emergency and disaster agencies and services, 10-3-201.

Part 5

Emergency Resource Management

10-3-501. Policy of state. (1) The legislature recognizes that an attack upon the United States is a possibility; that such attack might be of unprecedented size and destructiveness; that a considerable period of time may elapse after an attack before federal operational control over the management of resources can be instituted; and that federal planning and activities with respect to postattack recovery and rehabilitation necessarily are predicated on the ability of the states and their political subdivisions to prepare for and respond promptly to the problems created by an attack. Therefore, it is hereby found and declared to be necessary to confer upon the governor and upon the executive heads of governing bodies of political subdivisions of this state the emergency powers provided for in this part.

(2) It is further declared to be the purpose of this part and the policy of this state that all resource management functions of this state be coordinated to the maximum extent with the comparable functions of the federal government, of other states and localities, and of private agencies to the end that the most effective preparation and use may be made of available manpower, resources, and facilities in an emergency.

History: En. Sec. 2, Ch. 297, L. 1967; Sec. 77-1502, R.C.M. 1947; amd. and redes. 77-2401 by Sec. 19, Ch. 94, L. 1974; R.C.M. 1947, 77-2401.

10-3-502. Definitions. Unless the context requires otherwise, in this part the following definitions apply:

(1) "Emergency resources management plan" means that plan prepared by the department of military affairs, approved by the federal office of emergency planning, and adopted by the governor, which sets forth the organization, administration, and functions for the emergency management by the state government of essential resources and economic stabilization within the state.

(2) "Enemy attack" means an actual attack by a foreign nation by hostile air raids or other forms of warfare upon this state or any other state or territory of the United States.

(3) "Political subdivision" means any county, city, town, or township of the state.

History: En. Sec. 3, Ch. 297, L. 1967; Sec. 77-1503, R.C.M. 1947; amd. and redes. 77-2402 by Sec. 20, Ch. 94, L. 1974; R.C.M. 1947, 77-2402(part).

10-3-503. Governor's powers and duties. (1) The governor has general direction and control of the emergency resources management within this state and all officers, boards, agencies, individuals, or groups established under the emergency resource management plan.

(2) In performing his duties under this part, the governor may cooperate with the federal government, with other states, and with private agencies in all matters pertaining to the emergency management of resources.

(3) In performing his duties under this part and to effect its policies and purpose, the governor may make, amend, and rescind the necessary orders and

rules to carry out this part within the limits of authority conferred upon him, with due consideration of the emergency resources management plans of the federal government.

History: En. Sec. 5, Ch. 297, L. 1967; Sec. 77-1505, R.C.M. 1947; amd. and redes. 77-2403 by Sec. 21, Ch. 94, L. 1974; R.C.M. 1947, 77-2403.

Cross-References

Governor as commander-in-chief of militia, Art. VI, sec. 13, Mont. Const.

Call of forces when authorized, Art. VI, sec. 13, Mont. Const.

Authority of Governor to proclaim martial rule, 10-1-106.

Extension of enlistments by Governor, 10-1-303.

Governor as commander-in-chief during emergencies, 10-3-305.

Governor's emergency powers and duties generally, 10-3-503.

Governor's proclamation of emergency, 10-3-505.

10-3-504. Emergency resource management plan. The plan shall provide an emergency organization and emergency administrative policies and procedures for the conservation, allocation, distribution, and use of essential resources available to the state following a civil defense emergency such as an attack upon the United States. It shall be supplemental to the national plan for emergency preparedness adopted by the president of the United States and shall become operative upon the establishment of a civil defense emergency. To the extent that the federal government is either incapable of or not prepared to conduct its emergency resources management program, the state plan will substitute for and replace the federal program until such time as the federal program becomes effective in the state.

History: En. Sec. 3, Ch. 297, L. 1967; Sec. 77-1503, R.C.M. 1947; amd. and redes. 77-2402 by Sec. 20, Ch. 94, L. 1974; R.C.M. 1947, 77-2402(part).

Cross-References

State disaster and emergency plan, 10-3-301.

10-3-505. Proclamation of emergency — effect and termination. (1) Following an attack, the governor, if he finds such action necessary to deal with the danger to the public safety caused thereby or to aid in the postattack recovery or rehabilitation of the United States or any part thereof, shall declare by proclamation the existence of a postattack recovery and rehabilitation emergency. Any such proclamation shall be ineffectual unless the legislature is then in session or the governor simultaneously issues an order convening the legislature in special session within 45 days.

(2) During the period when the proclamation issued under subsection (1) of this section is in force or during the continuance of any emergency declared by the president of the United States or the congress calling for postattack recovery and rehabilitation activities, subject to the limitations set forth in this part and in a manner consistent with any rules or orders and policy guidance issued by the federal government, the governor may issue, amend, and enforce rules and orders to:

(a) control, restrict, and regulate by rationing, freezing, use of quotas, prohibitions on shipments, price fixing, allocation, or other means, the use, sale, or distribution of food, feed, fuel, clothing and other commodities, materials, goods, or services;

(b) prescribe and direct activities in connection with but not limited to use, conservation, salvage, and prevention of waste of materials, services, and facilities, including production, transportation, power, and communication facilities, training and supply of labor, utilization of industrial plants, health and medical care, nutrition, housing, including the use of existing and private facilities, rehabilitation, education, welfare, child care, recreation, consumer protection, and other essential civil needs; and

(c) take such other action as may be necessary for the management of resources following an attack.

(3) All rules and orders issued under authority conferred by this part have the effect of law during the continuance of a proclamation or declaration of emergency as contemplated by this section when a copy of the rule or order is filed in the office of the secretary of state or, if issued by a local or area official, when filed in the office or offices of the county clerk and recorder. If, by reason of destruction or disruption attendant upon or resulting from attack, the filing requirements of this subsection cannot be met, public notice by such means as may be available shall be considered a complete and sufficient substitute. All existing laws, ordinances, rules, and orders inconsistent with the provisions of this part or any rule or order issued under the authority thereof shall be inoperative during the period of time and to the extent such inconsistency exists.

(4) Any authority exercised under a proclamation of emergency contemplated by this section may be exercised with respect to the entire territory over which the governor or other official, as the case may be, has jurisdiction or to any specified part thereof.

(5) The governor's power and authority to issue a proclamation following an attack shall be terminated by the passage of a joint resolution of the legislature or by declaration of the termination of the emergency by the president or by the congress, however, the proclamation shall terminate automatically 6 months after issuance and a similar proclamation may not be issued unless concurrence is given thereto by a joint resolution of the legislature.

History: En. Sec. 6, Ch. 297, L. 1967; Sec. 77-1506, R.C.M. 1947; amd. and redes. 77-2404 by Sec. 22, Ch. 94, L. 1974; amd. Sec. 14, Ch. 49, L. 1977; R.C.M. 1947, 77-2404.

Cross-References

Declaration of emergency, 10-3-302.

Declaration of disaster, 10-3-303.

Debris and wreckage removal in emergencies or disasters, 10-3-315.

Part inoperative upon convening of Legislature, 10-3-609.

10-3-506. Judicial inquiry of proclamation. Every proclamation and the facts related in the proclamation issued under this part are subject to judicial inquiry by the state supreme court as to the existence of the facts underlying the issuance of the proclamation and whether the action was reasonable under the circumstances.

History: En. Sec. 7, Ch. 297, L. 1967; Sec. 77-1507, R.C.M. 1947; amd. and redes. 77-2405 by Sec. 23, Ch. 94, L. 1974; R.C.M. 1947, 77-2405.

Cross-References

Jurisdiction of Supreme Court, Art. VII, sec. 2, Mont. Const.

Original jurisdiction of Supreme Court, 3-2-202.

10-3-507. Penalty for violation of rules. A person violating any of the rules or orders adopted and promulgated under 10-3-505 shall upon conviction be subject to a fine not to exceed $10,000 or to a term of imprisonment not to exceed 5 years, or both.

History: En. Sec. 8, Ch. 297, L. 1967; Sec. 77-1508, R.C.M. 1947; amd. and redes. 77-2406 by Sec. 24, Ch. 94, L. 1974; R.C.M. 1947, 77-2406.

Part 6

Continuity of Government

Part Cross-References

Continuity in government, Art. III, sec. 2, Mont. Const.

10-3-601. Citation of part. This part may be cited as "The Continuity in Government Act".

History: En. Sec. 1, Ch. 268, L. 1967; amd. Sec. 46, Ch. 100, L. 1973; R.C.M. 1947, 82-3801; amd. Sec. 11, Ch. 430, L. 1983.

10-3-602. Filling vacancy in governorship. Following an enemy attack, the line of succession to the office of governor shall be extended as provided in Title 2, chapter 16, part 5.

History: En. Sec. 2, Ch. 268, L. 1967; amd. Sec. 47, Ch. 100, L. 1973; R.C.M. 1947, 82-3802; amd. Sec. 6, Ch. 142, L. 1979.

Cross-References

Officers of the Senate and House of Representatives, 5-2-221.

10-3-603. Filling vacancy in boards of county commissioners. In case of a vacancy on any board of county commissioners occurring during or following an enemy attack, if the judge or judges of the judicial district in which the vacancy occurs be not available to make the appointment then the district judges of all other judicial districts shall be authorized to make such appointment. Provided, however, that of the available judges in the state of Montana that judge who holds court in the county seat closest to the county seat where the vacancy occurs shall be responsible for making the appointment to fill the vacancy.

History: En. Sec. 3, Ch. 268, L. 1967; amd. Sec. 48, Ch. 100, L. 1973; R.C.M. 1947, 82-3803.

Cross-References

Filling vacancies created by other causes, 7-4-2106.

10-3-604. Filling vacancy in city or town governing bodies. In the event that no members of a city or town council or commission are available following an enemy attack then the board of county commissioners of the county in which such city or town is located shall appoint successors to act in place of the unavailable members.

History: En. Sec. 4, Ch. 268, L. 1967; R.C.M. 1947, 82-3804.

Cross-References

Filling vacancies created by other causes, 7-4-4112.

10-3-605. Filling vacancy for city or town executive. In the event that the executive head of any city or town is unavailable following an enemy attack to exercise the powers and discharge the duties of his office, then those members of the city or town council or commission available shall, by majority vote, choose a successor to act as the executive head of such city or town.

History: **En. Sec. 5, Ch. 268, L. 1967; R.C.M. 1947, 82-3805.**

Cross-References

Filling of vacancy created by other causes, 7-4-4112.

10-3-606. Quorum requirement. If, following an enemy attack, the legislature or any state or local government council, board, or commission is unable to assemble a quorum as defined by the constitution of Montana or by statute, then those legislators or members of the council, board, or commission available for duty shall constitute the legislature, board, or commission and quorum requirements shall be suspended. Where the affirmative vote of a specified proportion of members for the approval of any action would otherwise be required, the same proportion of those voting thereon shall be sufficient.

History: **En. Sec. 6, Ch. 268, L. 1967; R.C.M. 1947, 82-3806.**

Cross-References

Quorum of Legislature, Art. V, sec. 10, Mont. Const.

Quorum of City or Town Council, 7-5-4121.

Quorum of school district trustees, 20-3-322.

10-3-607. Relocating seat of state government. If the seat of state government at Helena is rendered unsuitable for use in that capacity, the seat of state government may be moved to an alternate location within the boundaries of the state of Montana by proclamation of the governor. He shall consider other Montana cities in order of their population in the last federal census, giving consideration to available communications, office space, and such other factors as may seem to him pertinent. Such move of the seat of government shall be effective until it is again moved by proclamation of the governor or action by the legislature.

History: **En. Sec. 7, Ch. 268, L. 1967; R.C.M. 1947, 82-3807; amd. Sec. 12, Ch. 430, L. 1983.**

Cross-References

Continuity in government, Art. III, sec. 2, Mont. Const.

Change of venue of District Court in emergency, 3-5-405.

Proclamation of emergency — effect and termination, 10-3-505.

10-3-608. Relocating seat of local government. Following an enemy attack in which the seat of local government of any political subdivision of the state shall have been rendered unsuitable for use in that capacity, in the opinion of the governing body of that political subdivision, such seat of government may be moved by said governing body to such other location as it deems most suitable.

History: **En. Sec. 8, Ch. 268, L. 1967; R.C.M. 1947, 82-3808.**

Cross-References

Change of venue of District Court in emergency, 3-5-405.

County buildings — replacement or repair, 7-14-2524.

Proclamation of emergency — effect and termination, 10-3-505.

10-3-609. Part inoperative upon convening of legislature. The provisions of this part shall become inoperative at the time of the convening of the first legislature following the emergency which originally made such provisions operative.

History: **En. Sec. 9, Ch. 268, L. 1967; R.C.M. 1947, 82-3809.**

Cross-References

Proclamation of emergency — effect and termination, 10-3-505.

Part 7
Tactical Incident Assistance

10-3-701. Short title. This part may be cited as the "Tactical Incident Assistance Act".

History: En. Sec. 1, Ch. 455, L. 1989.

10-3-702. Definitions. As used in this part, the following definitions apply:

(1) "Jurisdiction" means the jurisdiction of any law enforcement agency within Montana.

(2) "Tactical incident" means any situation in which it is reasonable to expect the possibility of the loss of life or the taking of a hostage unless extraordinary steps are taken. These situations may include but are not limited to:

(a) a barricaded gunman;
(b) a person taken hostage;
(c) arrests in extraordinary circumstances;
(d) civil disorder;
(e) terrorist activity;
(f) protection of a dignitary; and
(g) courtroom security in extraordinary circumstances.

(3) "Tactical team" means a small group of highly disciplined law enforcement officers trained to provide a quick and ready response to high risk conditions and situations that go beyond the capabilities of normally trained and equipped officers. With specialized training, tactics, and equipment, this small group of officers provides a greater expectation of resolving incidents without loss of property, injury, or loss of life.

History: En. Sec. 2, Ch. 455, L. 1989.

10-3-703. Tactical team aiding another jurisdiction. (1) If a tactical incident exceeds the capability of a local law enforcement agency, the agency administrator may request the assistance of a tactical team from another jurisdiction.

(2) A tactical team called to another jurisdiction has peace officer status in that jurisdiction under the authority of the requesting agency.

History: En. Sec. 3, Ch. 455, L. 1989.

10-3-704. Local agency to contact national guard. (1) If a tactical incident exceeds the capability of a local law enforcement agency, the agency administrator may call the national guard staff duty office for assistance as provided in 10-3-705.

(2) The national guard staff duty officer shall inform the governor of the request.

History: En. Sec. 4, Ch. 455, L. 1989.

10-3-705. Tactical incident — national guard assistance. (1) Upon request by a local law enforcement agency administrator, the governor may order the national guard to provide transportation services and the use of national guard equipment to the requesting agency tactical team or to tactical teams that are providing assistance to the requesting agency during a tactical incident.

(2) This section does not give the national guard the status or authority of peace officers.

History: En. Sec. 5, Ch. 455, L. 1989.

Cross-References

Authority of Governor to proclaim martial rule, 10-1-106.

Governor's emergency powers and duties generally, 10-3-305.

Parts 8 through 10 reserved

Part 11

Interstate Emergency Services

Part Cross-References

Intergovernmental cooperation, Title 10, ch. 3, part 2.

10-3-1101. Short title. This part shall be known and may be cited as the "Interstate Emergency Services Mutual Aid Act".

History: En. Sec. 1, Ch. 5, L. 1989.

10-3-1102. Purpose. It is the purpose of this part to permit one or more fire protection services, emergency medical care providers, or local government subdivisions of this state to enter into mutual aid agreements, on the basis of mutual advantage, with one or more fire protection services, emergency medical care providers, or local government subdivisions of any other state or the United States in order to facilitate and coordinate efficient, cooperative firefighting efforts directed toward protection of life and property in areas transcending state boundaries that, due to geographic remoteness, population sparsity, and economic or other factors, are in need of such services.

History: En. Sec. 2, Ch. 5, L. 1989.

10-3-1103. Definitions. As used in this part, unless the context requires otherwise, the following definitions apply:

(1) "Emergency medical care provider" means a local government subdivision or other entity, whether public or private, licensed by the state to provide emergency medical services pursuant to Title 50, chapter 6.

(2) "Fire protection service" means a paid or volunteer fire department, fire company, or other fire suppression entity organized under the laws of this state, any party state, or an agency of the government of the United States.

(3) "Local government subdivision" means the local governmental entity, other than state government, including but not limited to incorporated towns and cities, townships, and counties.

(4) "Mutual aid agreement" or "agreement" means an agreement, consistent with the purposes of this part, by one or more fire protection services, emergency medical care providers, or local government subdivisions of this state with one or more fire protection services, emergency medical care providers, or local government subdivisions of any other state or the United States.

(5) "Party emergency service" means a fire protection service, emergency medical care provider, local government subdivision, or agency of the United States that is a party to a mutual aid agreement as set forth in this part.

History: En. Sec. 3, Ch. 5, L. 1989.

10-3-1104. Authorization to enter agreement — general content — authority. (1) Any one or more fire protection services, emergency medical care providers, or local government subdivisions of this state may enter into a mutual aid agreement with any one or more fire protection services, emergency medical care providers, or local government subdivisions of any other state or the United States to provide emergency services to the area covered by the agreement. The agreement must be authorized and approved by the governing body of each party to the agreement that is not an agency of the United States government.

(2) The agreement must fully set forth the powers, rights, and obligations of the parties to the agreement.

(3) A mutual aid agreement grants a fire protection service or emergency medical care provider of this state authority to operate outside of the state and grants authority for a fire protection service or emergency medical care provider of another state or the United States to operate within this state as if the fire service or emergency medical care provider were organized and operated under the laws of this state.

History: En. Sec. 4, Ch. 5, L. 1989.

10-3-1105. Detailed content of agreement. The agreement authorized by 10-3-1104 must specify the following:

(1) the purpose of the agreement;

(2) the precise organization, composition, and nature of any separate legal entity created by the agreement;

(3) the duration of the agreement;

(4) the manner of financing the agreement and establishing and maintaining a budget therefor;

(5) a provision for administering the agreement, which may include creation of a joint board responsible for such administration;

(6) the exact chain of command or delegation of authority to be followed by party emergency services acting under the provisions of the agreement;

(7) the manner of acquiring, holding, and disposing of real and personal property used in the agreement; and

(8) the method to be employed in accomplishing the partial or complete termination of the agreement and for disposing of property upon such partial or complete termination.

History: En. Sec. 5, Ch. 5, L. 1989.

10-3-1106. Submission of agreement to attorney general. (1) As a condition precedent to an agreement becoming effective under this part, the agreement must be submitted to and receive the approval of the state attorney general.

(2) The attorney general shall approve an agreement submitted to him under this part unless he finds that it is not in proper form, does not meet the requirements set forth in this part, or otherwise does not conform to the laws of Montana. If he disapproves an agreement, he shall provide a detailed, written

statement to the appropriate governing bodies of the fire protection services, emergency medical care providers, and local government subdivisions.

(3) If the attorney general does not disapprove an agreement within 60 days after its submission to him, it is considered approved.

History: **En. Sec. 9, Ch. 5, L. 1989.**

10-3-1107. Filing of agreement. Within 20 days after approval by the attorney general, an agreement made pursuant to this part must be filed in the office of:

(1) each clerk and recorder of each county of this state where the principal office of one of the parties to the agreement is located; and

(2) the secretary of state.

History: **En. Sec. 10, Ch. 5, L. 1989.**

Cross-References

Duties of Secretary of State, 2-15-401.

Role and duties of County Clerk, 7-4-2611.

Fees of County Clerk, 7-4-2631.

10-3-1108 through 10-3-1110 reserved.

10-3-1111. Agreement not to relieve agency of duties. No agreement made under this part may relieve any fire protection service, emergency medical care provider, or local government subdivision of this state of a duty imposed upon it by law. Timely performance of such a duty by a joint board or other legal or administrative entity created by a mutual aid agreement may be offered in satisfaction of the duty.

History: **En. Sec. 7, Ch. 5, L. 1989.**

Cross-References

Liability of governmental entities generally, Title 2, ch. 9.

Limitations on liability for emergency care, 27-1-714.

Emergencies and special situations, 41-1-405.

10-3-1112. Limitation of powers. Except for the right granted by this part to jointly exercise powers, this part does not authorize any fire protection service, emergency medical care provider, or local government subdivision of this state to exercise a power that it is not otherwise authorized to exercise.

History: **En. Sec. 8, Ch. 5, L. 1989.**

10-3-1113. Right of state in actions involving agreements. In any case or controversy involving performance or interpretation of or liability under a mutual aid agreement entered into between one or more fire protection services, emergency medical care providers, or local government subdivisions of this state and one or more fire protection services, emergency medical care providers, or local government subdivisions of another state or of the United States, the parties to the agreement are the real parties in interest. This state may maintain an action against any fire protection service, emergency medical care provider, or local government subdivision whose default, failure, performance, or other conduct caused or contributed to a liability incurred by the state.

History: **En. Sec. 6, Ch. 5, L. 1989.**

10-3-1114. Effect of other law. The procedures and remedies provided in this part apply to the exclusion of those remedies and procedures for interlocal agreements generally under Title 7, chapter 11, part 1.

History: **En. Sec. 12, Ch. 5, L. 1989.**

10-3-1115. Authorization to appropriate funds for purpose of agreement. A fire protection service, emergency medical care provider, or local government subdivision of this state may appropriate funds for and may sell, lease, or otherwise supply material to any entity created for the purpose of performance of an agreement and may provide such personnel or services therefor as are within its authority to furnish.

History: En. Sec. 11, Ch. 5, L. 1989.

Part 12
Response to Hazardous Material Incidents

Part Compiler's Comments

Effective Date: Section 19, Ch. 270, L. 1995, provided that this part is effective on passage and approval. Approved March 28, 1995.

Part Cross-References

Employee and Community Hazardous Chemical Information Act, Title 50, ch. 78.

Nuclear regulation, Title 75, ch. 3.

Montana Hazardous Waste and Underground Storage Tank Act, Title 75, ch. 10, part 4.

State participation in CERCLA, Title 75, ch. 10, part 6.

Comprehensive Environmental Cleanup and Responsibility Act, Title 75, ch. 10, part 7.

Western Interstate Nuclear Compact, 90-5-201.

10-3-1201. Short title. This part may be cited as the "Montana Response to Hazardous Material Incidents Act".

History: En. Sec. 1, Ch. 270, L. 1995.

10-3-1202. Purpose. It is the purpose of this part to:

(1) provide that adequate hazardous material emergency response capability exists in the state in order to protect the health and safety of Montana citizens and the environment;

(2) delineate those state agencies responsible for responding to a hazardous material incident;

(3) provide for the control and management of incidents;

(4) provide for the cooperation of other state agencies and local governments in incident management; and

(5) provide for the formulation of a comprehensive, statewide incident management and hazardous material response support plan.

History: En. Sec. 2, Ch. 270, L. 1995.

10-3-1203. Definitions. As used in this part, the following definitions apply:

(1) "Commission" means the state emergency response commission.

(2) "Division" means the division of disaster and emergency services in the department of military affairs.

(3) "Duration of response" means a period of time beginning when a emergency responder is requested by the appropriate authority to respond to an incident and ending when the responder is released from the incident by the incident commander and returned to the emergency responder's place of residence by the most direct route and includes the time required to replace and return all materials used for the incident to the same or similar condition and state of readiness as before the response.

(4) "Hazardous material" means a hazardous substance, a hazardous or deleterious substance as defined in 75-10-701, radioactive material, or a com-

bination of a hazardous substance, a hazardous or deleterious substance, and radioactive material.

(5) "Hazardous material incident response team" means an organized group of trained response personnel, operating under an emergency response plan and appropriate standard operating procedures, that is expected to perform work to control an actual release or threatened release of hazardous material requiring close approach to the material, to respond to releases or threatened releases of hazardous material for the purpose of control or stabilization of the incident, and to provide technical assistance to local jurisdictions.

(6) (a) "Hazardous substance" means flammable solids, semisolids, liquids, or gases; poisons; explosives; corrosives; compressed gases; reactive or toxic chemicals; irritants; or biological agents.

(b) The term does not include radioactive material.

(7) "Incident" means an event involving the release or threat of release involving hazardous material that may cause injury to persons, the environment, or property.

(8) "Local emergency operations plan" means the local and interjurisdictional disaster and emergency plan developed pursuant to 10-3-401.

(9) "Local emergency response authority" means the person or persons designated by the city, county, or commission to be responsible for the management of an incident at the local level.

(10) "Orphaned hazardous material" means hazardous material of which the owner cannot be identified.

(11) "Plan" means the Montana incident management and hazardous material response support plan.

(12) (a) "Radioactive material" means any material or combination of material that spontaneously emits ionizing radiation.

(b) The term does not include material in which the specific activity is not greater than 0.002 microcuries per gram of material unless the material is determined to be radioactive by the U.S. environmental protection agency or the U.S. occupational safety and health administration.

(13) "State hazardous material incident response team" means persons who are designated as state employees by the commission while they are engaged in activities as provided for in 10-3-1204 and may include members of the commission and local and state government responders.

(14) "Threat of release" or "threatened release" means an indication of the possibility of the release of a hazardous material into the environment.

History: En. Sec. 3, Ch. 270, L. 1995.

10-3-1204. State emergency response commission. (1) There is a state emergency response commission that is attached to the department for administrative purposes. The commission must consist of 20 members appointed by the governor. The commission must include representatives of the national guard, air force, state and local fire organizations, state and local emergency medical responders, state and local law enforcement agencies, local emergency planning committees, a Montana utility company, and a railroad company doing business in the state, representatives from the department of public health and human services, the division, the department of transportation, the department of administration, the department of justice, the department of fish, wildlife, and parks, and the office of the governor, and any other representatives that the governor appoints. The members shall serve without compensation. The governor shall appoint a presiding officer from the appointees.

(2) The commission shall implement the provisions of this part, and in so doing, the commission may create and implement a state hazardous material incident response team to respond to incidents. The members of the team must be certified in accordance with the plan.

(3) The commission may enter into written agreements with each entity or person providing equipment or services to the state hazardous material incident response team.

(4) The commission or its designee may direct that the state hazardous material incident response team be available and respond, when requested by a local emergency response authority, to incidents according to the plan.

(5) The commission may contract with persons to meet state emergency response needs for the state hazardous material incident response team.

(6) The commission may advise, consult, cooperate, and enter into agreements with agencies of the state and federal government, other states and their state agencies, cities, counties, tribal governments, and other persons concerned with emergency response and matters relating to and arising out of incidents.

(7) The commission may encourage, participate in, or conduct studies, investigations, training, research, and demonstrations for and with the state hazardous material incident response team, local emergency responders, and other interested persons.

(8) The commission may collect and disseminate information relating to emergency response to incidents.

(9) The commission may accept and administer grants, gifts, or other funds, conditional or otherwise, made to the state for emergency response activities provided for in this part.

(10) The commission may prepare, coordinate, implement, and update a plan, which coordinates state and local emergency authorities, to respond to incidents within the state. The plan must be consistent with this part. All state emergency response responsibilities relating to an incident must be defined by the plan.

(11) The commission has the powers and duties of a state emergency response commission under the federal Emergency Planning and Community Right-to-Know Act of 1986, 42 U.S.C. 11001, et seq., except that the division shall oversee the creation, annual local review, and exercise and revision of the local emergency operations plan as provided by state law.

(12) The commission shall promulgate rules and procedures limited to cost recovery procedures, certification of state response team members, and deployment of the state hazardous material incident response team, which must be a part of the plan.

(13) All state agencies and institutions shall cooperate with the commission in the commission's efforts to carry out its duties under this part.

History: En. Sec. 4, Ch. 270, L. 1995.

Compiler's Comments

Code Commissioner Change: Pursuant to sec. 3, Ch. 546, L. 1995, the Code Commissioner substituted Department of Public Health and Human Services for Department of Health and Environmental Sciences.

10-3-1205 and 10-3-1206 reserved.

10-3-1207. Commission budget and expenditures. (1) The commission shall submit its budget to the division.

(2) The commission shall expend any funds appropriated to it in the following priority:

(a) payment of workers' compensation premiums for coverage of state hazardous material incident response team members;

(b) training activities for the state hazardous material incident response team;

(c) equal payments to each hazardous material incident response team as compensation for duties established in the plan; and

(d) any remaining funds to be used at the discretion of the commission for programs related to the plan.

History: En. Sec. 5, Ch. 270, L. 1995.

10-3-1208. Local emergency response authorities — designation. (1) The governing body of each incorporated city and county shall designate the local emergency response authority for incidents that occur within its jurisdiction.

(2) Local emergency response authority members must be trained in hazardous material incident response in compliance with 29 CFR 1910.120(q), as amended.

(3) An incorporated city may, with the mutual consent of the county, designate the county as its local emergency response authority and participate in the local emergency operations plan for incident response.

(4) If an incident occurs in an area in which local emergency response authority has not been designated, the presiding officer of the board of county commissioners must be the local emergency response authority for the incident for the purposes of this part.

History: En. Sec. 6, Ch. 270, L. 1995.

10-3-1209. Local emergency response authorities — powers and duties. (1) Every local emergency response authority designated pursuant to this part shall respond to incidents occurring within its jurisdiction according to the local emergency operations plan. The local emergency response authority shall also respond to an incident that initially occurs within its jurisdiction but spreads to another jurisdiction. If an incident occurs on a boundary between two jurisdictions or in an area where the jurisdiction is not readily ascertainable, the first local emergency response authority to arrive at the scene of the incident shall perform the initial emergency response duties.

(2) Each local emergency response authority shall define in writing its incident management system and specifically define the agency that will be the incident commander.

(3) The incident commander shall declare that the emergency situation associated with an incident has ended when the acute threat to public health and safety or to the environment has been sufficiently addressed.

History: **En. Sec. 7, Ch. 270, L. 1995.**

10-3-1210. Controlling provisions for state of emergency — liability of responsible persons. In the event that a state of emergency is declared by proper authority pursuant to 10-3-302, as the result of an incident, the provisions of 10-3-303 govern.

History: **En. Sec. 8, Ch. 270, L. 1995.**

10-3-1211. Notification of release. (1) A person responsible for reporting a release under the federal Comprehensive Environmental Response, Compensation, and Liability Act of 1980, 42 U.S.C. 9603, shall, as soon as practicable after obtaining the knowledge of a required reportable release, other than a permitted release, notify the division of the release.

(2) The division shall notify the commission of releases or threatened releases as defined in the plan.

(3) The division shall immediately notify the department of environmental quality of any release reported and who will respond according to the plan.

(4) Any person who does not make notification in accordance with the provisions of this section is liable for a civil penalty not to exceed $10,000 for each day the violation continues to a maximum of $100,000. These penalties are in addition to any other penalties imposed by law. All penalties collected must be deposited in the environmental contingency account provided for in 75-1-1101.

(5) Compliance with the reporting requirements of this section does not relieve any person of the obligation to report the same incident under any other applicable state or federal law, regulation, or other requirement.

History: **En. Sec. 9, Ch. 270, L. 1995.**

Compiler's Comments

Code Commissioner Change: Pursuant to sec. 568, Ch. 546, L. 1995, the Code Commissioner substituted Department of Environmental Quality for Department of Health and Environmental Sciences.

10-3-1212 and 10-3-1213 reserved.

10-3-1214. Right to reimbursement. (1) State hazardous material incident response team members may submit claims to the commission for reimbursement of documented costs incurred as a result of the team's response to an incident. Reimbursement for the costs may not exceed the duration of response.

(2) A party who is not a part of the state hazardous material incident response team and is not liable under federal or state law may submit a claim to the commission for costs if the claim is associated with a request by the state hazardous material incident response team or the commission.

(3) Claims for reimbursement must be submitted to the commission within 60 days after termination of the response to the incident for the state's determination of payment, if any.

(4) Reimbursement may be made only after the commission finds that the actions by the applicant were taken in response to an incident as defined in this part and only if adequate funds are available.

History: **En. Sec. 10, Ch. 270, L. 1995.**

10-3-1215. Deficiency warrants for reimbursement of response costs. (1) (a) The commission shall review all claims for reimbursement and make recommendations to the governor as to payment or nonpayment of the claims within 90 days of receipt. The governor may authorize the issuance of warrants to be paid from the environmental contingency account provided for in 75-1-1101 to the limit of the fund balance for the purpose of reimbursing reasonable and documented costs associated with emergency actions taken pursuant to this part.

(b) The costs of routine firefighting procedures are not reimbursable costs under this part.

(2) Reimbursement must be in accordance with the schedule defined in the plan.

(3) The decision of the governor is final and nonappealable.

(4) This section may not be construed to change or impair any right of recovery or subrogation arising under any other provision of law.

History: En. Sec. 11, Ch. 270, L. 1995.

10-3-1216. Cost recovery and civil remedies. (1) Cost recovery is the duty of the city or county having authority where an incident occurred.

(2) The commission shall ensure the recovery of state expenditures according to the plan.

(3) A person responsible for an incident is liable for attorney fees and costs of the commission incurred in recovering costs associated with responding to an incident.

(4) The remedy for the recovery of emergency response costs identified in this part is in addition to any other remedy for recovery of the costs provided by applicable federal or state law.

(5) Any person who receives compensation for the emergency response costs pursuant to any other federal or state law is precluded from recovering compensation for those costs pursuant to this chapter.

(6) Except for the commission and the state hazardous material incident response team, this part does not otherwise affect or modify in any way the obligations or liability of any person under any other provision of state or federal law, including common law, for damages, injury, or loss resulting from the release or threatened release of any hazardous material or for remedial action or the costs of remedial action for a release or threatened release.

(7) Any person who is not a liable party under the federal Comprehensive Environmental Response, Compensation, and Liability Act of 1980, 42 U.S.C. 9601, et seq., as amended, or the Comprehensive Environmental Cleanup and Responsibility Act, Title 75, chapter 10, part 7, and who renders assistance in response to an emergency situation associated with an incident may file a civil action against the responsible party for recoverable costs that have not been reimbursed by the state.

(8) Recoveries by the state for reimbursed costs under this section must be deposited in the environmental contingency account to offset amounts paid as reimbursement.

(9) (a) In the event of orphaned hazardous material or the inability of the state to recover the full cost associated with an incident and the cost of collection described in this section, the state shall recover from the city or county having authority where the incident occurred an amount equal to 25% of the total cost identified pursuant to this part.

(b) When the hazardous material incident occurs in or involves multiple jurisdictions, the collectible amount must be equally divided among the jurisdictions.

History: En. Sec. 12, Ch. 270, L. 1995.

10-3-1217. Liability of persons and response team members rendering assistance. The commission and the state hazardous material incident response team are not liable under this part for injuries, costs, damages, expenses, or other liabilities resulting from the release or threatened release of a hazardous material. The immunity includes but is not limited to indemnification, contribution, or third-party claims for wrongful death, personal injury, illness, loss or damages to property, or economic loss. A person becomes a member of the state hazardous material incident response team when the person is contacted for response regardless of the person's location.

History: En. Sec. 13, Ch. 270, L. 1995.

10-3-1218. Required assistance in hazardous material incident. An owner or agent of the owner of a hazardous material involved in an incident, a person causing an incident, a person transporting a hazardous material involved in an incident, and a person owning or occupying property involved in an incident shall assist the state as requested by the incident commander in responding to an emergency situation associated with the incident as may be necessary to address an acute threat to public health or safety or to the environment until the incident commander declares that the emergency situation is over.

History: En. Sec. 14, Ch. 270, L. 1995.

CHAPTER 4

STATE EMERGENCY TELEPHONE SYSTEM

Part 1 — Emergency Telephone System Plans

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10-4-302. Distribution of account by department.
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Chapter Cross-References

State government communication systems, Title 2, ch. 17, part 3.

Regulation of communication utilities, Title 69, ch. 3 and 6.

Part 1

Emergency Telephone System Plans

10-4-101. Definitions. As used in this chapter, unless the context requires otherwise, the following definitions apply:

(1) "Account" means the 9-1-1 emergency telecommunications account established in 10-4-301.

(2) "Department" means the department of administration provided for in Title 2, chapter 15, part 10.

(3) "Direct dispatch method" means a 9-1-1 service in which a public safety answering point, upon receipt of a telephone request for emergency services, provides for a decision as to the proper action to be taken and for dispatch of appropriate emergency service units.

(4) "Emergency" means any event that requires dispatch of a public or private safety agency.

(5) "Emergency services" means services provided by any public or private safety agency, including law enforcement, firefighting, ambulance or medical services, and civil defense services.

(6) "Exchange access services" means:

(a) telephone exchange access lines or channels that provide local access from the premises of a subscriber in this state to the local telecommunications network to effect the transfer of information; and

(b) unless a separate tariff rate is charged therefor, any facility or service provided in connection with the services described in subsection (6)(a).

(7) "Local government" means any city, county, or political subdivision of the state and its agencies.

(8) "Minimum 9-1-1 service" means a telephone service meeting the standards established in 10-4-102 that automatically connects a person dialing the digits 9-1-1 to an established public safety answering point. "Minimum 9-1-1 services" includes equipment for connecting and outswitching 9-1-1 calls within a telephone central office, trunking facilities from the central office to a public safety answering point, and equipment, as appropriate, for transferring the call to another point, when appropriate.

(9) A "9-1-1 jurisdiction" means a group of public or private safety agencies who operate within or are affected by one or more common central office boundaries and who have agreed in writing to jointly plan a 9-1-1 emergency telephone system.

(10) "Private safety agency" means any entity, except a public safety agency, providing emergency fire, ambulance, or medical services.

(11) "Provider" means a public utility, cooperative telephone company, or any other entity that provides telephone exchange access services.

(12) "Public safety agency" means the state and any city, county, city-county consolidated government, municipal corporation, chartered organization, public district, or public authority located in whole or in part within this state that provides or has authority to provide emergency services.

(13) "Public safety answering point" means a communications facility operated on a 24-hour basis that first receives 9-1-1 calls from persons in a 9-1-1 service area and which may, as appropriate, directly dispatch public or private safety services or transfer or relay 9-1-1 calls to appropriate public safety agencies.

(14) "Relay method" means a 9-1-1 service in which a public safety answering point, upon receipt of a telephone request for emergency services, notes the pertinent information from the caller and relays such information to the appropriate public safety agency, other agencies, or other providers of emergency services for dispatch of an emergency unit.

(15) "Subscriber" means an end user who receives telephone exchange access services.

(16) "Transfer method" means a 9-1-1 service in which a public safety answering point, upon receipt of a telephone request for emergency services, directly transfers such a request to an appropriate public safety answering agency or other provider of emergency services.

History: En. Sec. 1, Ch. 635, L. 1985; amd. Sec. 30, Ch. 370, L. 1987.

10-4-102. Department of administration duties and powers. (1) The department shall assist in the development of 9-1-1 systems in the state. The department shall:

(a) establish procedures for determining and evaluating requests for variations from minimum 9-1-1 service;

(b) upon request of a 9-1-1 jurisdiction, assist in planning an emergency 9-1-1 telephone system;

(c) establish criteria for evaluating plans;

(d) monitor implementation of approved plans for compliance with the plan and use of funding; and

(e) as it finds necessary, report to the legislature the progress made in implementing a statewide emergency telephone system.

(2) The department shall obtain input from all 9-1-1 jurisdictions by creating an advisory council to participate in development and implementation of the 9-1-1 program in the state. The council must be established pursuant to 2-15-122. The highway patrol, emergency medical services organizations, telephone companies, the associated public safety communicators, the department of emergency services, police departments, sheriff's departments, local citizens, organizations, and other public safety organizations may submit recommendations for membership on the advisory council.

History: En. Sec. 3, Ch. 635, L. 1985; amd. Sec. 20, Ch. 112, L. 1991; amd. Sec. 16, Ch. 349, L. 1993.

Cross-References

Adoption and publication of rules, Title 2, ch. 4, part 3.

10-4-103. Emergency telephone system requirements. (1) Every public and private safety agency in this state may establish or participate in an emergency telephone system.

(2) An emergency telephone system must include:

(a) a 24-hour communications facility automatically accessible anywhere in the 9-1-1 jurisdiction's service area by dialing 9-1-1;

(b) direct dispatch of public and private safety services in the 9-1-1 jurisdiction or relay or transfer of 9-1-1 calls to an appropriate public or private safety agency; and

(c) a 24-hour communications facility equipped with at least two trunk-hunting local access circuits provided by the local telephone company's central office.

(3) The primary emergency telephone number within the state is 9-1-1, but a public safety answering point shall maintain both a separate seven-digit secondary emergency number for use by the telephone company operator and a separate seven-digit nonemergency number.

History: En. Sec. 2, Ch. 635, L. 1985.

10-4-104. Agreements among safety agencies for rendering emergency services. (1) Public or private safety agencies sharing common boundaries may enter into agreements which provide that an emergency unit dispatched by an emergency telephone system established in accordance with 10-4-103 must render emergency services without regard to jurisdictional boundaries.

(2) A public safety agency with jurisdictional responsibilities must in all cases be notified by the public safety answering point of a request for service in the agency's jurisdiction.

History: En. Sec. 7, Ch. 635, L. 1985.

10-4-105 through 10-4-110 reserved.

10-4-111. Submission of preliminary plans for 9-1-1 jurisdictions — review — cost estimates. (1) A 9-1-1 jurisdiction may submit a preliminary plan for establishing an emergency telephone system in accordance with 10-4-103 to:

(a) public and private safety agencies in the 9-1-1 jurisdiction;

(b) the department; and

(c) providers of telephone service in the 9-1-1 jurisdiction's service area.

(2) The department shall review the preliminary plan for compliance with 10-4-103 and rules adopted pursuant to 10-4-102 and report its approval or disapproval to the 9-1-1 jurisdiction within 90 days of receipt of the plan.

(3) A provider of telephone service in the 9-1-1 jurisdiction's service area shall, within 90 days of receipt of the plan, provide the 9-1-1 jurisdiction with a good faith estimate of the cost to the 9-1-1 jurisdiction for implementing the plan.

History: En. Sec. 4, Ch. 635, L. 1985.

10-4-112. Submission and approval of final plans — exception. (1) A 9-1-1 jurisdiction shall submit a proposed final plan for establishing an emergency telephone system pursuant to 10-4-103 within 1 year from receipt of the department's approval of its preliminary plan to:

(a) public and private safety agencies in the 9-1-1 jurisdiction;

(b) the department; and

(c) providers of telephone service in the 9-1-1 jurisdiction's service area.

(2) In addition to other matters required by 10-4-103, the final plan must include a description of all capital and recurring costs for the proposed emergency 9-1-1 telephone system.

(3) The department shall determine whether the final plan complies with 10-4-103 and rules adopted pursuant to 10-4-102. Subject to 10-4-113, if the department determines that the plan complies, it shall approve the plan, or if the department determines that the plan does not comply, it shall disapprove the plan. The department shall inform the 9-1-1 jurisdiction of its decision within 180 days of receipt of the plan. In any statement approving a final plan, the department shall indicate a timetable in which the provider shall undertake necessary telephone system conversions. The timetable must be such that conversions may not be required unless sufficient funds to compensate the provider for its conversion costs are available within 1 year of the initial installation of the 9-1-1 system.

History: En. Sec. 5, Ch. 635, L. 1985.

10-4-113. Requirement for approval of final plan — department to insure compliance. The department may not approve the preliminary or final plan of a 9-1-1 jurisdiction unless the plan is accompanied by a written approval from the governing bodies of all participating public and private safety agencies included in the 9-1-1 jurisdiction.

History: En. Sec. 6, Ch. 635, L. 1985.

10-4-114 through 10-4-120 reserved.

10-4-121. Pay phones to be converted to allow emergency calls without charge. Every provider of telephone service or other owner of a pay station telephone in an area served by an emergency telephone system established pursuant to 10-4-103 must convert every pay station telephone to permit dialing 9-1-1 or the telephone company operator without deposit of a coin or other charge to the caller. Conversion must be completed by or before the time the emergency telephone system is operational.

History: En. Sec. 8, Ch. 635, L. 1985.

Part 2

Funding

10-4-201. Fee imposed for telephone exchange access services. (1) Except as provided in 10-4-202, a fee of 25 cents a month per access line on each service subscriber in the state is imposed on the amount charged for telephone exchange access services.

(2) The subscriber paying for exchange access line services is liable for the fee imposed by this section.

(3) The provider shall collect the fee. The amount of the fee collected by the provider is considered payment by the subscriber for that amount of fee.

(4) Any return made by the provider collecting the fee is prima facie evidence of payments by the subscribers of the amount of fees indicated on the return.

History: En. Sec. 9, Ch. 635, L. 1985.

Cross-References

Cooperatives subject to fee, 35-18-503.

10-4-202. Exemptions from fee imposed. The fee imposed by 10-4-201 does not apply to:

(1) services that the state is prohibited from taxing under the constitution or laws of the United States or the constitution or laws of the state of Montana; or

(2) amounts paid by depositing coins in a public telephone.

History: En. Sec. 10, Ch. 635, L. 1985.

10-4-203. Provider required to maintain record of collections. Every provider responsible for the collection of the fee imposed by 10-4-201 shall keep records, render statements, make returns, and comply with rules adopted by the department of revenue with respect to the fee. Whenever necessary in the judgment of the department of revenue, it may require the provider or subscriber to make returns, render statements, or keep records sufficient to show whether there is liability for the fee.

History: En. Sec. 11, Ch. 635, L. 1985.

Cross-References

Adoption and publication of rules, Title 2, ch. 4, part 3.

10-4-204. Deadlines for filing returns. (1) The provider collecting the fee under 10-4-201 must file a return with the department of revenue on or before the last day of the month following the end of each calendar quarter, reporting the amount of fee due on exchange access line services during the quarter. Returns are subject to the penalty for false swearing provided in 45-7-202.

(2) When a return of the fee is required, the provider required to make the return shall pay the fee due the department of revenue at the time fixed for filing the return.

(3) The provider shall pay the fee based on the net amount billed for the exchange access service fee during the quarter.

(4) As used in this section, the "net amount billed for the exchange access service fee" equals the gross amount billed for such service, less adjustments for uncollectible accounts, refunds, incorrect billings, and other appropriate adjustments.

History: En. Sec. 12, Ch. 635, L. 1985.

10-4-205. Refund to provider for excess payment of fee. If the amount paid by a provider to the department of revenue exceeds the amount of fee owed, the department of revenue shall refund the amount of the excess payment, with interest on the excess payment at the rate of 0.5% a month or fraction of a month from the date of payment of the excess until the date of the refund. A refund may not be made to a provider who fails to claim the refund within 5 years after the due date for filing of the return with respect to which the claim for refund relates.

History: En. Sec. 13, Ch. 635, L. 1985; amd. Sec. 1, Ch. 229, L. 1993.

10-4-206. Credit for overpayment — interest on overpayment. (1) If the department of revenue determines that the amount of fee, penalty, or interest paid for any year is more than the amount due, the amount of the overpayment must be credited against any tax, penalty, or interest then due from the taxpayer and the balance refunded to the taxpayer or the taxpayer's successor through reorganization, merger, or consolidation or to the taxpayer's shareholders upon dissolution.

(2) Except as provided in subsection (3), interest is allowed on overpayments at the same rate as is charged on deficiency assessments from the due date of the return or from the date of overpayment, whichever date is later, to the date the department of revenue approves refunding or crediting of the overpayment.

(3) (a) Interest does not accrue during any period in which the processing of a claim for a refund is delayed more than 30 days by reason of failure of the taxpayer to furnish information requested by the department of revenue for the purpose of verifying the amount of the overpayment.

(b) Interest is not allowed:

(i) if the overpayment is refunded within 6 months from the date the return is due or from the date the return is filed, whichever is later; or

(ii) if the amount of interest is less than $1.

(c) Only a payment made incident to a bona fide and orderly discharge of actual tax liability or one reasonably assumed to be imposed by this chapter is considered an overpayment with respect to which interest is allowable.

History: En. Sec. 11, Ch. 676, L. 1991.

Cross-References

Returns and payment of tax — penalty and interest — refunds — credits, 15-30-142.

10-4-207. Statute of limitations. (1) Except as provided in subsection (3), a deficiency may not be assessed or collected with respect to the year for which a return is filed unless the notice of the additional fee proposed to be assessed is mailed within 5 years from the date the return was filed. For purposes of this section, a return filed before the last day prescribed for filing is considered as filed on the last day. If the taxpayer, before the expiration of the period prescribed for assessment of the fee, consents in writing to an assessment after that time, the fee may be assessed at any time prior to the expiration of the period agreed upon.

(2) A refund or credit may not be allowed or paid with respect to the year for which a return is filed after 5 years from the last day prescribed for filing the return or after 1 year from the date of the overpayment, whichever period expires later, unless before the expiration of the period the taxpayer files a claim or the department of revenue determines the existence of the overpayment and approves the refund or credit. If the taxpayer has agreed in writing under the provisions of subsection (1) to extend the time within which the department of revenue may propose an additional assessment, the period within which a claim for refund or credit may be filed or a credit or refund allowed if no claim is filed is automatically extended.

(3) If a return is required to be filed and the taxpayer fails to file the return, the tax may be assessed or an action to collect the tax may be brought at any time. If a return is required to be filed and the taxpayer files a fraudulent return, the 5-year period provided for in subsection (1) does not begin until discovery of the fraud by the department of revenue.

History: En. Sec. 15, Ch. 676, L. 1991.

10-4-208 through 10-4-210 reserved.

10-4-211. Provider required to hold fee in trust for state — penalty and interest. (1) Every provider required to collect the fee imposed by 10-4-201 holds it in trust for the state of Montana and for the payment thereof to the department of revenue in the manner and at the time provided by 10-4-204.

(2) (a) If a provider required to collect the fee fails to remit any amount held in trust for the state of Montana or if a subscriber fails to pay the fee on or before the last day of the month following the end of each calendar quarter, the department of revenue shall add to the amount of the delinquent fee, in addition to any other penalty provided by law, a penalty equal to 10% of the delinquent fee plus interest at the rate of 1% a month or fraction of a month computed on the amount of the delinquent fee plus any unpaid penalties and interest. Interest is computed from the date the fee is due until the date of payment.

(b) The department of revenue may waive the penalty if the provider establishes that the failure to pay on time was due to reasonable cause and was not due to neglect.

(3) (a) When a deficiency is determined and the additional fee becomes final, the department of revenue shall mail a notice and demand for payment to the provider. The fee is due and payable at the expiration of 10 days after the notice and demand were mailed. Interest on any deficiency assessment bears interest until paid, at the rate of 1% a month or fraction of a month, computed from the original due date of the return.

(b) If payment is not made within 10 days, the amount of the deficiency is considered delinquent. A 10% penalty must be added to the amount of the deficiency.

(4) The 10% penalty provided for in subsection (3)(b) may be waived by the department of revenue if the provider establishes that the failure to pay the proper amount of fees was due to reasonable cause and was not due to neglect.

(5) The department of revenue may enforce collection by the issuance of a warrant for distraint for the collection of the delinquent amount and all penalties, interest, and collection charges accrued thereon. The warrant is governed by the provisions of Title 15, chapter 1, part 7.

History: En. Sec. 14, Ch. 635, L. 1985; amd. Secs. 1, 19, Ch. 676, L. 1991.

Cross-References

Trust code, Title 72, ch. 33 through 36.

10-4-212. Provider considered a taxpayer under provisions for fee. Unless the context requires otherwise, the provisions of Title 15 referring to the audit and examination of reports and returns, determination of deficiency assessments, claims for refunds, penalties, interest, jeopardy assessments, warrants, conferences, appeals to the department of revenue, appeals to the state tax appeal board, and procedures relating thereto apply to this part as if the fee were a tax imposed upon or measured by net income. The provisions apply to the subscriber liable for the fee and to the provider required to collect the fee. Any amount collected and required to be remitted to the department of revenue is considered a tax upon the provider required to collect it, and that provider is considered a taxpayer.

History: **En. Sec. 15, Ch. 635, L. 1985; amd. Sec. 19, Ch. 10, L. 1993.**

Part 3

Emergency Telephone System Account — Usage

10-4-301. Establishment of emergency telecommunications account. A 9-1-1 emergency telecommunications account is established in the state special revenue fund in the state treasury. All money received by the department of revenue pursuant to 10-4-201 must be paid to the state treasurer for deposit in the account. After payment of refunds pursuant to 10-4-205, the balance of the account must be used for the purposes described in part 1 of this chapter. The distribution of the 9-1-1 emergency telecommunications account, according to the requirements of 10-4-302, is statutorily appropriated. Expenditures for actual and necessary expenses required for the efficient administration of the plan must be made from temporary appropriations, as described in 17-7-501(1) or (2), made for that purpose.

History: **En. Sec. 16, Ch. 635, L. 1985; amd. Sec. 2, Ch. 628, L. 1989.**

Cross-References

Fund structure, 17-2-102.

10-4-302. Distribution of account by department. (1) The department shall make quarterly distributions of the entire account beginning on April 1, 1987. The distributions must be made for the following:

(a) administrative costs incurred during the preceding calendar quarter by the department of revenue in carrying out this chapter. The amount paid may not exceed 1% of the account on the date of distribution or actual expenses incurred, whichever is less.

(b) administrative costs incurred during the preceding calendar quarter by the department in carrying out its duties under this chapter. The department's annual recovery of costs may not exceed 7% of the amount collected by the account during the fiscal year or actual expenses incurred, whichever is less.

(c) costs incurred during the preceding calendar quarter by each provider of telephone service in the state for:

(i) collection of the fee imposed by 10-4-201;

(ii) modification of central office switching and trunking equipment for emergency telephone service only; and

(iii) conversion of pay station telephones required by 10-4-121.

(2) Payments under subsection (1)(c) may be made only after application by the provider to the department for costs incurred in subsection (1)(c). The department shall review all applications relevant to subsection (1)(c) for appropriateness of costs claimed by the provider. If the provider contests the

review, payment may not be made until the amount owed the provider is made certain.

(3) After all amounts under subsections (1) and (2) have been paid, the balance of the account must be allocated to cities and counties on a per capita basis. However, each county must be allocated a minimum of 1% of the balance of the counties' share of the account. A 9-1-1 jurisdiction whose 9-1-1 service area includes more than one city or county is eligible to receive operating funds from the allocation for each city or county involved. The department shall distribute to the accounting entity designated by a 9-1-1 jurisdiction with an approved final plan the proportional amount for each city or county served by the 9-1-1 jurisdiction. The department shall provide a report indicating the proportional share derived from the individual city's or county's allocation with each distribution to a 9-1-1 jurisdiction.

(4) If the department through its monitoring process determines that a 9-1-1 jurisdiction is not adhering to an approved plan or is not using funds in the manner prescribed in 10-4-303, the department may, after notice and hearing, suspend payment to the 9-1-1 jurisdiction. The jurisdiction is not eligible to receive funds until such time as the department determines that the jurisdiction is complying with the approved plan and fund usage limitations.

History: En. Sec. 17, Ch. 635, L. 1985; amd. Sec. 1, Ch. 153, L. 1991.

Cross-References

Contested cases, Title 2, ch. 4, part 6.

10-4-303. Limitation on use of funds. Money received under subsection (3) of 10-4-302 may be used only to pay for installing, operating, and improving an emergency telephone system using 9-1-1. Money not necessary for immediate use may be invested by the city or county. The income from the investments shall be used only for the purposes described in this section.

History: En. Sec. 18, Ch. 635, L. 1985.

TITLES 11 AND 12

RESERVED

TITLE 13

ELECTIONS

Ch.
1. General Provisions.
2. Registration of Electors.
3. Precincts and Polling Places.
4. Election Judges.
   Chapters 5 through 9 reserved.
10. Primary Elections and Nominations.
11. Election Proclamation. Repealed. Sec. 407, Ch. 571, L. 1979.
12. Election Supplies and Ballots.
13. Election Procedure.
14. Nonpartisan Elections.
15. Canvassing, Returns, and Certificates.
16. Recounts and Tie Votes.
17. Voting Machines.
18. Electronic Voting Systems. Repealed. Sec. 407, Ch. 571, L. 1979.
19. Mail Ballot Elections.
    Chapters 20 and 21 reserved.
22. Youth Voting Act.
    Chapters 23 and 24 reserved.
25. Elections for Federal Office.
26. Convention to Ratify Amendments to United States Constitution.
27. Ballot Issues.
    Chapters 28 through 34 reserved.
35. Election and Campaign Practices and Criminal Provisions.
36. Contests.
37. Control of Campaign Practices.
38. Political Parties.

Title Cross-References

Right of suffrage, Art. II, sec. 13, Mont. Const.

Right of initiative and referendum, Art. III, sec. 4 through 7, Mont. Const.

Suffrage and elections, Art. IV, Mont. Const.

Secret ballot, Art. IV, sec. 1, Mont. Const.; 13-1-102.

Eligibility for public office, Art. IV, sec. 4, Mont. Const.

Election of executive officers, Art. VI, sec. 2, Mont. Const.

Public office — candidacy while holding other public office, Art. VI, sec. 5, Mont. Const.

Vacancy in executive branch office, Art. VI, sec. 6 and 14, Mont. Const.; Title 2, ch. 16, part 5.

Election of judicial officers, Art. VII, sec. 8, Mont. Const.

Local government initiative and referendum, Art. XI, sec. 8, Mont. Const.

Constitutional revision by initiative and referendum, Art. XIV, sec. 8, 9, Mont. Const.

General qualifications of public officers, 2-16-102.

Residence of public officers, 2-16-111.

Accession to office, Title 2, ch. 16, part 2.

Salaries of elected officials, Title 2, ch. 16, part 4.

Vacancy and succession of public officers, Title 2, ch. 16, part 5.

Montana Recall Act, Title 2, ch. 16, part 6.

Vacancy on Supreme or District Court, Title 3, ch. 1, part 10.

Election of Supreme Court Justices, Title 3, ch. 2, part 1.

Election of District Court Justices, Title 3, ch. 5, part 2.

Election of Municipal Court Judges, Title 3, ch. 6, part 2.

Election of Justices of the Peace, Title 3, ch. 10, part 2.

Districting and apportionment, Title 5, ch. 1, part 1.

Vacancy in House or Senate, Title 5, ch. 2, part 4.

Time of election of officers of reclassified municipality, 7-1-4116.

Election on question of creating new county, Title 7, ch. 2, part 22.

Election on question of locating permanent county seat, Title 7, ch. 2, part 23.

Election on change of name of county, Title 7, ch. 2, part 25.

Election on removal of county seat, Title 7, ch. 2, part 26.

Elections on abandonment and consolidation of counties, Title 7, ch. 2, part 27.

Election on question of organization of municipality, Title 7, ch. 2, part 41.

Annexation and exclusion, Title 7, ch. 2, parts 42 through 48.

Election on disincorporation, Title 7, ch. 2, part 49.

Election on alteration of form of local government, Title 7, ch. 3, part 1.

Election on consolidation of city-county government, Title 7, ch. 3, part 12.

Election on formation of commission form of municipal government, Title 7, ch. 3, part 42.

Election on formation of commission-manager form of municipal government, Title 7, ch. 3, part 43.

Vacancy in county office, 7-4-2106, 7-4-2206.

Election authorizing county to exceed maximum mill levy, Title 7, ch. 6, part 25.

Election authorizing municipality to exceed maximum mill levy, Title 7, ch. 6, part 44.

Challenges to local government bond elections, 7-7-105.

Election on question of issuance of county bonds, Title 7, ch. 7, part 22.

Election on question of county borrowing money, Title 7, ch. 7, part 24.

Election on question of issuance of municipal bonds, Title 7, ch. 7, part 42.

Election on question of creating county water and sewer districts, Title 7, ch. 13, part 22.

Election on question of creating municipal water and sewer systems, Title 7, ch. 13, part 43.

Election on question of creating urban transportation district, Title 7, ch. 14, part 2.

Election on question of creating county park district, Title 7, ch. 16, part 24.

Election on creation of rural fire districts, Title 7, ch. 33, part 21.

Election on question of creating hospital district, Title 7, ch. 34, part 21.

Election on question of creating cemetery district, Title 7, ch. 35, part 21.

Election of Superintendent of Public Instruction, Title 20, ch. 3, part 1.

Election of County Superintendent of Schools, Title 20, ch. 3, part 2.

Election of board of trustees of school district, Title 20, ch. 3, part 3.

Election on question of authorization of community college district, Title 20, ch. 15, part 2.

Election of trustees of community college district, Title 20, ch. 15, part 2.

Conduct of school elections, Title 20, ch. 20.

Election on question of creating a public library, Title 22, ch. 1, part 3.

Right to hold elected office, 49-1-202.

Rights and duties of electors as compared to nonelectors, 49-1-203.

Election of Public Service Commissioners, Title 69, ch. 1, part 1.

Election of supervisor of conservation district, Title 76, ch. 15, part 3.

Conduct of irrigation district elections, Title 85, ch. 7, part 17.

Election to create a conservancy district, Title 85, ch. 9, part 2.

Conduct of conservancy district elections, 85-9-422.

CHAPTER 1

GENERAL PROVISIONS

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Part 1
General Provisions

13-1-101. Definitions. As used in this title, unless the context clearly indicates otherwise, the following definitions apply:

(1) "Anything of value" means any goods that have a certain utility to the recipient that is real and that is ordinarily not given away free but is purchased.

(2) "Candidate" means:

(a) an individual who has filed a declaration or petition for nomination, acceptance of nomination or appointment as a candidate for public office as required by law;

(b) for the purposes of chapters 35, 36, or 37, an individual who has solicited or received and retained contributions, made expenditures, or given consent to an individual, organization, political party, or committee to solicit or receive and retain contributions or make expenditures on the individual's behalf to secure nomination or election to any office at any time, whether or not the office for which the individual will seek nomination or election is known when the:

(i) solicitation is made;

(ii) contribution is received and retained; or

(iii) expenditure is made; and

(c) an officeholder who is the subject of a recall election.

(3) (a) "Contribution" means:

(i) an advance, gift, loan, conveyance, deposit, payment, or distribution of money or anything of value to influence an election;

(ii) a transfer of funds between political committees;

(iii) the payment by a person other than a candidate or political committee of compensation for the personal services of another person that are rendered to a candidate or political committee.

(b) "Contribution" does not mean:

(i) services provided without compensation by individuals volunteering a portion or all of their time on behalf of a candidate or political committee or meals and lodging provided by individuals in their private residence for a candidate or other individual;

(ii) the cost of any bona fide news story, commentary, or editorial distributed through the facilities of any broadcasting station, newspaper, magazine, or other periodical publication of general circulation;

(iii) the cost of any communication by any membership organization or corporation to its members or stockholders or employees, as long as the organization is not a primary political committee; or

(iv) filing fees paid by the candidate.

(4) "Election" means a general, regular, special, or primary election held pursuant to the requirements of state law, regardless of the time or purpose.

(5) "Election administrator" means the county clerk and recorder or the individual designated by a county governing body to be responsible for all election administration duties, except that with regard to school elections, the term means the school district clerk.

(6) "Elector" means an individual qualified and registered to vote under state law.

(7) (a) "Expenditure" means a purchase, payment, distribution, loan, advance, promise, pledge, or gift of money or anything of value made for the purpose of influencing the results of an election.

(b) "Expenditure" does not mean:

(i) services, food, or lodging provided in a manner that they are not contributions under subsection (3);

(ii) payments by a candidate for a filing fee or for personal travel expenses, food, clothing, lodging, or personal necessities for the candidate and the candidate's family;

(iii) the cost of any bona fide news story, commentary, or editorial distributed through the facilities of any broadcasting station, newspaper, magazine, or other periodical publication of general circulation; or

(iv) the cost of any communication by any membership organization or corporation to its members or stockholders or employees, as long as the organization is not a primary political committee.

(8) "General election" or "regular election" means an election held for the election of public officers throughout the state at times specified by law, including elections for officers of political subdivisions when the time of the election is set on the same date for all similar political subdivisions in the state. For ballot issues required by Article III, section 6, or Article XIV, section 8, of the Montana constitution to be submitted by the legislature to the electors at a general election, "general election" means an election held at the time provided in 13-1-104(1). For ballot issues required by Article XIV, section 9, of the Montana constitution to be submitted as a constitutional initiative at a regular election, regular election means an election held at the time provided in 13-1-104(1).

(9) "Individual" means a human being.

(10) "Issue" or "ballot issue" means a proposal submitted to the people at an election for their approval or rejection, including but not limited to initiatives, referenda, proposed constitutional amendments, recall questions, school levy questions, bond issue questions, or a ballot question. For the purposes of chapters 35, 36, or 37, an issue becomes a "ballot issue" upon certification by the proper official that the legal procedure necessary for its qualification and placement upon the ballot has been completed, except that a statewide issue becomes an "issue" upon approval by the secretary of state of the form of the petition or referral.

(11) "Person" means an individual, corporation, association, firm, partnership, cooperative, committee, club, union, or other organization or group of individuals or a candidate as defined in subsection (2) of this section.

(12) "Political committee" means a combination of two or more individuals or a person other than an individual who makes a contribution or expenditure:

(a) to support or oppose a candidate or a committee organized to support or oppose a candidate or a petition for nomination; or

(b) to support or oppose a ballot issue or a committee organized to support or oppose a ballot issue; or

(c) as an earmarked contribution.

(13) "Political subdivision" means a county, consolidated municipal-county government, municipality, special district, or any other unit of government, except school districts, having authority to hold an election for officers or on a ballot issue.

(14) "Primary" or "primary election" means an election held throughout the state to nominate candidates for public office at times specified by law, including nominations of candidates for offices of political subdivisions when the time for nominations is set on the same date for all similar subdivisions in the state.

(15) "Public office" means a state, county, municipal, school, or other district office that is filled by the people at an election.

(16) "Registrar" means the county election administrator and any regularly appointed deputy or assistant election administrator.

(17) "Special election" means an election other than a statutorily scheduled primary or general election held at any time for any purpose provided by law. It may be held in conjunction with a statutorily scheduled election.

(18) "Voting machine or device" means any equipment used to record, tabulate, or in any manner process the vote of an elector.

History: Ap. p. Sec. 1, Ch. 368, L. 1969; amd. Sec. 1, Ch. 365, L. 1977; Sec. 23-2601, R.C.M. 1947; Ap. p. Sec. 2, Ch. 480, L. 1975; amd. Sec. 2, Ch. 365, L. 1977; Sec. 23-4777, R.C.M. 1947; R.C.M. 1947, 23-2601, 23-4777; amd. Sec. 1, Ch. 571, L. 1979; amd. Sec. 1, Ch. 603, L. 1983; amd. Sec. 31, Ch. 370, L. 1987; amd. Sec. 1, Ch. 339, L. 1989; amd. Sec. 1, Ch. 390, L. 1993.

Cross-References

Elections on initiatives and referenda, Art. III, sec. 6, Mont. Const.

Amendment by legislative referendum, Art. XIV, sec. 8, Mont. Const.

Amendment by initiative, Art. XIV, sec. 9, Mont. Const.

"People" as a political body defined, 1-1-401.

Electors eligible to vote in election for fire district board of trustees, 7-33-2106.

Definition of "qualified elector" for conservation district elections, 76-15-103(9).

Elector requirement in election to create conservation district project area, 76-15-606.

13-1-102. Elections by secret ballot. All elections shall be by secret ballot.

History: En. Sec. 2, Ch. 368, L. 1969; amd. Sec. 1, Ch. 8, L. 1973; R.C.M. 1947, 23-2602.

Cross-References

Secret ballot, Art. IV, sec. 1, Mont. Const.

Secrecy required when aiding disabled elector, 13-13-119.

Voting machines to allow elector to vote in secrecy, 13-17-103.

Criminal provisions relating to secrecy, 13-35-201.

13-1-103. Determination of winner. The individual receiving the highest number of votes for any office at an election is elected or nominated to that office.

History: En. Sec. 3, Ch. 368, L. 1969; R.C.M. 1947, 23-2603; amd. Sec. 2, Ch. 571, L. 1979.

Cross-References

Result of elections, Art. IV, sec. 5, Mont. Const.

Secretary of State to certify names of persons receiving highest number of votes for offices commissioned by the Governor, 2-15-401.

13-1-104. Times for holding general elections. (1) A general election shall be held throughout the state in every even-numbered year on the first Tuesday after the first Monday of November to vote on ballot issues required by Article III, section 6, or Article XIV, section 8, of the Montana constitution to be submitted by the legislature to the electors at a general election, unless an earlier date is provided in a law authorizing a special election on an initiative or referendum pursuant to Article III, section 6, and to elect federal officers, state or multicounty district officers, members of the legislature, judges of the district court, and county officers when the terms of such offices will expire before the next scheduled election for the offices or when one of the offices must be filled for an unexpired term as provided by law.

(2) A general election shall be held throughout the state in every odd-numbered year on the first Tuesday after the first Monday in November to elect municipal officers, officers of political subdivisions wholly within one county and not required to hold annual elections, and any other officers specified by law for election in odd-numbered years when the term for the offices will expire before the next scheduled election for the offices or when one of the offices must be filled for an unexpired term as provided by law.

(3) The general election for any political subdivision, other than a municipality, required to hold elections annually shall be held on school election day, the first Tuesday of April of each year, and is subject to the election procedures provided for in 13-1-401.

(4) The general election for a municipality required to hold elections annually may be held either on school election day as provided in subsection (3) or on the first Tuesday after the first Monday in November, at the discretion of the governing body.

History: En. Sec. 4, Ch. 368, L. 1969; R.C.M. 1947, 23-2604; amd. Sec. 4, Ch. 571, L. 1979; amd. Sec. 5, Ch. 27, L. 1981; amd. Sec. 2, Ch. 603, L. 1983; amd. Sec. 2, Ch. 216, L. 1987; amd. Sec. 1, Ch. 644, L. 1987.

Cross-References

Vote on initiative and referendum measures, Art. III, sec. 6, Mont. Const.

Constitutional amendment by legislative referendum, Art. XIV, sec. 8, Mont. Const.

Constitutional amendment by initiative, Art. XIV, sec. 9, Mont. Const.

General election day legal holiday, 1-1-216.

Vacancies in Senate, 5-2-406, 5-2-407.

Election on question of creating new county, 7-2-2215.

Election on question of annexation by petition, 7-2-4602.

Election of City Judge, 7-3-1342, 7-3-4462.

Time for election of directors of county water and sewer districts, 7-13-2236.

Election of local port authority commissioners, 7-14-1106.

Vote on creation of municipal housing authority, 7-15-4408.

Election on tax levy for county parks, 7-16-2102.

Time for election of trustees of fire district, 7-33-2106.

Manner of conducting general elections for political subdivisions required to hold annual elections, 13-1-401.

Election day school holiday under certain circumstances, 20-1-305.

Election day as bank holiday, 32-1-481.

Time for election of commissioners of irrigation districts, 85-7-1702.

Time for election of commissioners of drainage districts, 85-8-302.

13-1-105. Repealed. Sec. 407, Ch. 571, L. 1979.

History: En. Sec. 56, Ch. 368, L. 1969; R.C.M. 1947, 23-3301.

13-1-106. Time of opening and closing of polls for all elections — exceptions. (1) Polls must be open from 7 a.m. to 8 p.m., except polling places having fewer than 200 registered electors, which must be open from noon to 8 p.m. or until all registered electors in any precinct have voted, at which time the polls shall be closed immediately.

(2) When an election held under 13-1-104(3) and a school election are conducted in the same polling place, the polls shall be opened and closed at the times set for the school election, as provided in 20-20-106.

History: En. Sec. 5, Ch. 368, L. 1969; amd. Sec. 4, Ch. 365, L. 1977; R.C.M. 1947, 23-2605; amd. Sec. 5, Ch. 571, L. 1979; amd. Sec. 1, Ch. 676, L. 1983; amd. Sec. 1, Ch. 57, L. 1985.

13-1-107. Times for holding primary elections. (1) On the first Tuesday after the first Monday in June preceding the general election provided for in 13-1-104(1), a primary election shall be held throughout the state.

(2) On the Tuesday following the second Monday in September preceding the general election provided for in 13-1-104(2), a primary election, if required, shall be held throughout the state.

(3) If the general election for a municipality required to hold annual elections is held in November, as provided in 13-1-104(4), a primary election, if required, shall be held on the Tuesday following the second Monday in September. In an even-numbered year, the cost of this election must be paid by the municipality.

History: En. Sec. 3, Ch. 571, L. 1979; amd. Sec. 3, Ch. 216, L. 1987.

Cross-References

Election on question of creating new county, 7-2-2215.

Election on special additional mill levy — hospital districts, 7-34-2135.

Presidential preference primary to be held in conjunction with state primary, 13-10-401.

13-1-108. Notice of special elections. Notice of any special election shall be published at least once a week for the 3 successive weeks before the election on radio or television as provided in 2-3-105 through 2-3-107 or in a newspaper of general circulation in the jurisdiction where the election will be held.

History: En. Sec. 6, Ch. 571, L. 1979.

Cross-References

Notice of recall election, 2-16-622, 2-16-631.

Notice of election on question of creating new county, 7-2-2215.

Notice of election on question of organization of new municipality, 7-2-4104, 7-2-4105.

Notice of election on question of annexation by petition, 7-2-4603.

Notice of election on question of disincorporation of municipality, 7-2-4903.

Notice of election on question of city-county consolidation, 7-3-1204.

Notice of election to elect members of commission of city-county government, 7-3-1208.

Notice of election on question of granting municipal franchise, 7-5-4322.

Notice of election on question of additional mill levy, 7-6-4434.

Notice of election on question of resort community tax, 7-6-4464.

Notice of election on question of issuance of county bonds, 7-7-2229.

Notice of election on question of issuance of municipal bonds, 7-7-4227.

Notice of election on question of creation of county water and sewer district, 7-13-2210.

Notice of election on question of incurring indebtedness for county water and sewer district, 7-13-2324.

Notice of irrigation district special election, 85-7-1712.

13-1-109. Election records open to public. Unless specifically provided otherwise, all records pertaining to elector registration and elections are public records. They shall be open for inspection during regular office hours.

History: En. Sec. 15, Ch. 571, L. 1979.

Cross-References

Right to know, Art. II, sec. 9, Mont. Const.

13-1-110 reserved.

13-1-111. Qualifications of voter. (1) No person may be entitled to vote at elections unless he has the following qualifications:

(a) He must be registered as required by law.

(b) He must be 18 years of age or older.

(c) He must be a resident of the state of Montana and of the county in which he offers to vote for at least 30 days.

(d) He must be a citizen of the United States.

(2) No person convicted of a felony has the right to vote while he is serving a sentence in a penal institution.

(3) No person adjudicated to be of unsound mind has the right to vote, unless he has been restored to capacity as provided by law.

History: En. Sec. 6, Ch. 368, L. 1969; amd. Sec. 1, Ch. 120, L. 1971; amd. Sec. 2, Ch. 158, L. 1971; amd. Sec. 1, Ch. 40, L. 1973; R.C.M. 1947, 23-2701.

Cross-References

Qualified elector, Art. IV, sec. 2, Mont. Const.

Rules for determining residence generally, 1-1-215.

Electors as part of the political body, 1-1-401.

Elections on questions of municipal indebtedness — qualifications, 7-7-4103.

State residency not required to vote on question of creation of county water/sewer district, 7-13-2212.

Firefighters — qualifications for employment, 7-33-4107.

Registration generally, Title 13, ch. 2.

Challenges of voter qualifications prior to election, 13-2-404.

Change of residence to another county within 45 days of election, 13-2-514.

Qualification of elector in school elections, 20-20-301.

Definition of "felony", 45-2-101(21).

Effect of conviction, 46-18-801.

Right to hold elected office, 49-1-202.

Rights and duties of nonelector, 49-1-203.

Developmentally disabled individuals, Title 53, ch. 20.

Mentally ill individuals, Title 53, ch. 21.

Persons under disability, guardianship, and conservatorship, Title 72, ch. 5.

13-1-112. Rules for determining residence. For registration, voting, or seeking election to the legislature, the residence of any individual must be determined by the following rules as far as they are applicable:

(1) The residence of an individual is where the individual's habitation is fixed and to which, whenever the individual is absent, the individual has the intention of returning.

(2) An individual may not gain or lose a residence while kept involuntarily at any public institution, not necessarily at public expense; as a result of being confined in any public prison; or solely as a result of residing on a military reservation.

(3) An individual in the armed forces of the United States may not become a resident solely as a result of being stationed at a military facility in the state. An individual may not acquire a residence solely as a result of being employed or stationed at a training or other transient camp maintained by the United States within the state.

(4) An individual does not lose residence if the individual goes into another state or other district of this state for temporary purposes with the intention of returning, unless the individual exercises the election franchise in the other state or district.

(5) An individual may not gain a residence in a county if the individual comes in for temporary purposes without the intention of making that county the individual's home.

(6) If an individual moves to another state with the intention of making it the individual's residence, the individual loses residence in this state.

(7) The place where an individual's family resides is presumed to be that individual's place of residence. However, an individual who takes up or continues a residence at a place other than where the individual's family resides with the intention of remaining is a resident of the place where the individual resides.

(8) A change of residence may be made only by the act of removal joined with intent to remain in another place.

History: En. Sec. 41, Ch. 368, L. 1969; amd. Sec. 1, Ch. 394, L. 1971; amd. Sec. 1, Ch. 164, L. 1975; amd. Sec. 1, Ch. 177, L. 1975; R.C.M. 1947, 23-3022(part); amd. Sec. 7, Ch. 571, L. 1979; amd. Sec. 1, Ch. 74, L. 1993.

Cross-References

Legislature to provide residency requirements, Art. IV, sec. 3, Mont. Const.

Rules for determining residence generally, 1-1-215.

13-1-113. Only one residence. There can be only one residence.

History: En. Sec. 41, Ch. 368, L. 1969; amd. Sec. 1, Ch. 394, L. 1971; amd. Sec. 1, Ch. 164, L. 1975; amd. Sec. 1, Ch. 177, L. 1975; R.C.M. 1947, 23-3022(part); amd. Sec. 8, Ch. 571, L. 1979.

Cross-References

Legislature to provide residency requirements, Art. IV, sec. 3, Mont. Const.

13-1-114. Computation of elector's age and term of residence. An elector's age and the term of his residence must be computed by including the day of election.

History: En. Sec. 41, Ch. 368, L. 1969; amd. Sec. 1, Ch. 394, L. 1971; amd. Sec. 1, Ch. 164, L. 1975; amd. Sec. 1, Ch. 177, L. 1975; R.C.M. 1947, 23-3022(10); amd. Sec. 9, Ch. 571, L. 1979.

Cross-References

Legislature to provide residency requirements, Art. IV, sec. 3, Mont. Const.

13-1-115. Privilege from arrest. Electors are privileged from arrest during their attendance at elections and in going to and from voting places, except in cases of treason, felony, or breach of the peace.

History: En. Sec. 10, Ch. 368, L. 1969; R.C.M. 1947, 23-2705.

Cross-References

Privilege from arrest, Art. IV, sec. 6, Mont. Const.

Persons exempt from arrest, 46-6-102.

13-1-116 through 13-1-120 reserved.

13-1-121. Question of holding constitutional convention. Unless otherwise submitted earlier, the secretary of state shall cause the question of holding an unlimited constitutional convention to be submitted to the people at the general election in 1990. The same question shall be submitted at the general election in each 20th year following its last submission, unless otherwise submitted earlier.

History: En. Sec. 1, Ch. 36, L. 1973; R.C.M. 1947, 23-4801.

Cross-References

Convention by call of Legislature, Art. XIV, sec. 1, Mont. Const.

Periodic submission of question of holding convention, Art. XIV, sec. 3, Mont. Const.

Call of convention, Art. XIV, sec. 4, Mont. Const.

Initiative for call of convention, 13-27-206.

13-1-122. Ballot form and content. The ballot submitting the question to the people shall contain the following:

Article XIV, sections 3 and 4, of the Montana constitution requires the question of holding an unlimited constitutional convention to be submitted to the people at the general election in each 20th year following its last submission. If a majority of those voting on the question answer in the affirmative, the legislature shall provide for the calling thereof at its next session.

☐ FOR calling a constitutional convention

☐ AGAINST calling a constitutional convention

History: En. Sec. 2, Ch. 36, L. 1973; R.C.M. 1947, 23-4802; amd. Sec. 10, Ch. 571, L. 1979.

Cross-References

Periodic submission of question of holding convention, Art. XIV, sec. 3, Mont. Const.

Part 2
Role of Secretary of State

13-1-201. Chief election officer. The secretary of state is the chief election officer of this state, and it is his responsibility to obtain and maintain uniformity in the application, operation, and interpretation of the election laws other than those in chapters 35, 36, or 37 of this title.

History: En. Sec. 11, Ch. 571, L. 1979.

Cross-References

Administration of elections — constitutional requirement, Art. IV, sec. 3, Mont. Const.

13-1-202. Forms and rules prescribed by chief election officer. (1) In carrying out his responsibilities under 13-1-201, the secretary of state shall prepare and deliver to the election administrators:

(a) written directives and instructions relating to and based on the election laws;

(b) sample copies of prescribed and suggested forms; and

(c) advisory opinions on the effect of election laws other than those laws in chapters 35, 36, or 37 of this title.

(2) The secretary of state may prescribe the design of any election form required by law. He must seek the advice of election administrators and printers in designing the required forms.

(3) Each election administrator shall comply with the directives and instructions and shall provide election forms prepared as prescribed.

History: En. Sec. 12, Ch. 571, L. 1979.

13-1-203. Chief election officer to advise, assist, and train. The secretary of state shall advise and assist election administrators with regard to application, operation, and interpretation of Title 13, except for chapters 35, 36, or 37. The secretary of state shall hold at least one workshop every 2 years to provide training and assistance to election administrators. Election administrators must be reimbursed, from funds appropriated to the secretary of state, for their mileage and expenses for attending the workshops at the rates set for mileage and expenses in 2-18-501 through 2-18-503. At the discretion of the secretary of state and within the budget limits allowed for workshops, the workshops may be held in several sessions at separate locations in the state.

History: En. Sec. 13, Ch. 571, L. 1979; amd. Sec. 32, Ch. 370, L. 1987; amd. Sec. 1, Ch. 4, Sp. L. November 1993.

13-1-204. Election records to be kept by secretary of state. (1) The secretary of state shall maintain current and accurate records including:

(a) a list of all precincts in each county;

(b) a map showing the boundaries of all precincts in each county;

(c) a count of the number of registered voters in each precinct for the latest general election;

(d) a list of legislative districts, judicial districts, and any multicounty election districts, showing the precinct numbers of each county contained in each district and the number of registered voters in each district for the latest general election;

(e) a count of votes cast at the latest general election by precinct and by legislative, judicial, and multicounty districts.

(2) Each election administrator shall provide the information and map for the record required in subsection (1) in the form and at the time prescribed by the secretary of state.

(3) The records required in subsection (1) and all records in the secretary of state's office pertaining to elections shall be open for public inspection during normal office hours.

History: En. Sec. 18, Ch. 571, L. 1979; amd. Sec. 1, Ch. 70, L. 1983.

Cross-References

Right to know, Art. II, sec. 9, Mont. Const.

Districting and apportionment, Title 5, ch. 1.

Election records open to public, 13-1-109.

Part 3
Local Election Administration

Part Cross-References

Administration of elections — constitutional requirement, Art. IV, sec. 3, Mont. Const.

Municipal elections — wards, 7-4-4401.

Election on creation of county park district, 7-16-2412.

Election on tax levy — search and rescue units, 7-32-235.

13-1-301. Election administrator. (1) The county clerk and recorder of each county is the election administrator unless the governing body of the county designates another official or appoints an election administrator.

(2) The election administrator is responsible for the administration of all procedures relating to registration of electors and conduct of elections and shall keep all records relating to elector registration and elections.

(3) The election administrator may appoint a deputy election administrator for each political subdivision required to hold annual elections under the provisions of 13-1-104(3). Each election administrator or deputy election administrator is responsible for the conduct of the annual elections of such political subdivision, as provided by 13-1-401.

History: En. Sec. 14, Ch. 571, L. 1979; amd. Sec. 6, Ch. 27, L. 1981.

Cross-References

Duties of County Clerk, 7-4-2611.

Definition of County Election Administrator, 13-1-101(5).

Request for County Election Administrator to conduct school election, 20-20-417.

13-1-302. Election costs. (1) Unless specifically provided otherwise, all costs of the regularly scheduled primary and general elections shall be paid by the counties and other political subdivisions for which the elections are held. Each political subdivision shall bear its proportionate share of the costs as determined by the county governing body.

(2) A political subdivision holding an annual election with a regularly scheduled school election shall bear its proportionate share of the costs as determined by the county election administrator and the school district election administrator.

(3) The political subdivision for which a special election is held shall bear all costs of the election, or its proportionate share as determined by the county governing body if held in conjunction with any other election.

(4) Costs of elections may not include the services of the election administrator or capital expenditures.

(5) The county governing body shall set a schedule of fees for services provided to school districts by the election administrator.

(6) Election costs shall be paid from county funds, and any shares paid by other political subdivisions shall be credited to the fund from which the costs were paid.

(7) The proportionate costs referred to in subsection (1) of this section shall be only those additional costs incurred as a result of the political subdivision holding its election in conjunction with the primary or general election.

History: En. Sec. 16, Ch. 571, L. 1979; amd. Sec. 7, Ch. 27, L. 1981; amd. Sec. 1, Ch. 558, L. 1983; amd. Sec. 2, Ch. 644, L. 1987.

Cross-References

Expenses of Election Administrator, 13-2-117.

Expenses of recount in close election, 13-16-205.

Expenses of court-ordered recount, 13-16-307.

Expenses of printing paper ballots, 13-17-305.

13-1-303. Disposition of ballots and other election materials. (1) The voted ballots, detached stubs, unvoted ballots, and unused ballots from an election shall be kept in the unopened packages received from the election judges for a period of 12 months. Such packages may be opened only when an order for opening is given by the proper official for a recount procedure. After 12 months, if there is no contest begun, recount pending, or appeal of a decision relating to a contest or recount, an election administrator may destroy the ballots without opening the packages.

(2) The secretary of state, in consultation with the state records committee, shall prepare a suggested plan for retention and destruction of all other election records. Each election administrator shall prepare a plan for retention and destruction of election records in the county and shall submit it to the secretary of state for approval. After approval of such a plan, records may be destroyed as provided in the plan.

History: En. Sec. 17, Ch. 571, L. 1979.

Cross-References

Recount procedures, Title 13, ch. 16.

13-1-304. Duties of officials when election not held. If a scheduled election is not necessary or is canceled for any reason, the governing body or official making the determination shall immediately notify the election administrator in writing. If the election is not necessary because of the number of candidates filed, the election administrator shall make the determination and notify the proper governing body.

History: En. Sec. 25, Ch. 571, L. 1979.

Cross-References

Registration lists not required when election not to be held, 13-2-115.

Precinct register not required when election not held, 13-2-116.

When primary election unnecessary, 13-10-209.

When nonpartisan primary election unnecessary, 13-14-115.

Part 4

Political Subdivision Elections

13-1-401. Manner of conducting general elections for political subdivisions required to hold annual elections. (1) Any political subdivision required to hold annual elections under 13-1-104(3) may cooperate with school districts having similar district boundaries to hold the election at the same location. The election administrator or deputy election administrator appointed under the provisions of 13-1-301 shall cooperate with the school district election administrator to share costs, as provided in 13-1-302.

(2) A political subdivision subject to 13-1-104(3) may, with the consent of the election administrator or deputy election administrator, conduct its annual election at an annual meeting of the political subdivision or at another convenient location within the political subdivision.

(3) A political subdivision election subject to 13-1-104(3) may be conducted by mail ballot as provided in Title 13, chapter 19.

(4) The election administrator or deputy election administrator conducting an election under the provisions of subsection (1), (2), or (3) shall give notice of the election not less than 20 days or more than 40 days before the day of the election by display advertisement at least two times in a newspaper of general circulation within the political subdivision. The election administrator or deputy election administrator may notify the public of the election by additional posting of notices or radio and television announcements.

History: En. Sec. 8, Ch. 27, L. 1981; amd. Sec. 29, Ch. 196, L. 1985.

Cross-References

Time for election of directors of county water and sewer districts, 7-13-2236.

Election of local port authority commissioners, 7-14-1106.

Time for election of trustees of fire district, 7-33-2106.

Procedure for election of trustees of hospital district, 7-34-2116 through 7-34-2118.

Payment of election costs, 13-1-302.

School elections, Title 20, ch. 20.

Procedure for election of commissioners of irrigation district, 85-7-1702, 85-7-1710.

Procedure for election of commissioners of drainage district, 85-8-302, 85-8-304, 85-8-306.

CHAPTER 2

REGISTRATION OF ELECTORS

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13-2-601. Name on precinct register prima facie evidence of right to vote.
13-2-602. Joinder of parties in proceedings to compel entry of name in register.
13-2-603. Erroneous omission of name from precinct register.

Chapter Cross-References

Registration and voting by facsimile authorized, 13-13-277.

Part 1
Registrars

13-2-101. Repealed. Sec. 407, Ch. 571, L. 1979.

History: En. Sec. 21, Ch. 368, L. 1969; amd. Sec. 8, Ch. 365, L. 1977; R.C.M. 1947, 23-3002(1), (2).

13-2-102. Repealed. Sec. 12, Ch. 390, L. 1993.

History: En. Sec. 22, Ch. 368, L. 1969; amd. Sec. 1, Ch. 340, L. 1973; amd. Sec. 1, Ch. 205, L. 1975; amd. Sec. 9, Ch. 365, L. 1977; R.C.M. 1947, 23-3003; amd. Sec. 19, Ch. 571, L. 1979; amd. Sec. 1, Ch. 146, L. 1983; amd. Sec. 1, Ch. 446, L. 1985; amd. Sec. 1, Ch. 298, L. 1987.

13-2-103 through 13-2-110 reserved.

13-2-111. Repealed. Sec. 407, Ch. 571, L. 1979.

History: En. Sec. 21, Ch. 368, L. 1969; amd. Sec. 8, Ch. 365, L. 1977; R.C.M. 1947, 23-3002(3).

13-2-112. Register of electors to be kept. Each election administrator shall keep an official register of electors in the manner he considers most efficient. The original signed registration form for each elector shall be filed alphabetically in a separate file for each precinct. Additional files and records may be established for convenience. The information recorded in the official register of electors and the design of the registration forms shall be prescribed by the secretary of state.

History: En. Sec. 23, Ch. 368, L. 1969; R.C.M. 1947, 23-3004; amd. Sec. 20, Ch. 571, L. 1979.

13-2-113. Repealed. Sec. 407, Ch. 571, L. 1979.

History: En. Sec. 1, Ch. 243, L. 1971; R.C.M. 1947, 23-3004.1.

13-2-114. Registration numbers to be assigned. (1) The registration form for each elector shall be assigned a number by the election administrator, using a system of numbering that best accommodates the filing system and list preparation method used. The election administrator may adopt the use of the elector's social security number as the registration number. If social security numbers are used, they may not be printed on lists of registered voters or released as public information.

(2) If social security numbers are used as the registration number, the election administrator may assign an alternative number for any elector who does not have a social security number or who declines to provide the number. A system of assigning alternative numbers shall be developed in consultation with the secretary of state.

(3) Upon receipt by the election administrator of a properly completed registration card, the registration of the elector is complete and the election administrator shall assign a registration number.

History: En. Sec. 24, Ch. 368, L. 1969; amd. Sec. 1, Ch. 3, L. 1974; R.C.M. 1947, 23-3005(part); amd. Sec. 21, Ch. 571, L. 1979; amd. Sec. 1, Ch. 284, L. 1983.

Cross-References

Right to know, Art. II, sec. 9, Mont. Const.

Right of privacy, Art. II, sec. 10, Mont. Const.

Municipalities — petition signatures, 7-1-4133.

13-2-115. Registration lists to be prepared. (1) Except as provided in subsection (5), immediately after registration is closed, the election administrator shall prepare and must have printed lists of all registered electors in each precinct. Names of electors must be listed alphabetically, with their residence address or with a mailing address if located where street numbers are not used. A preliminary list of registered electors may be printed before the close of registration for an election. If a preliminary list is printed, a supplementary list must be printed after the close of registration.

(2) A copy of the list of registered voters must be displayed at the polling place. Extra copies of the lists must be retained by the election administrator and furnished to an elector upon request.

(3) The list of registered electors prepared for a primary election may be used for the general election if a supplemental list giving the additions and deletions since the primary list was prepared is printed. The election administrator may prepare lists for a special election, but lists are not required to be printed for special elections.

(4) Lists of registered voters need not be printed if the election will not be held.

(5) If a law enforcement officer or reserve officer, as defined in 7-32-201, requests in writing that, for security reasons, the officer's and the officer's spouse's residential address, if the same as the officer's, not be disclosed, the registrar may not include the address on any list of registered voters but shall list only the name or names.

History: Ap. p. Sec. 31, Ch. 368, L. 1969; amd. Sec. 5, Ch. 158, L. 1971; amd. Sec. 12, Ch. 100, L. 1973; Sec. 23-3012, R.C.M. 1947; Ap. p. Sec. 42, Ch. 368, L. 1969; amd. Sec. 2,

Ch. 243, L. 1971; amd. Sec. 1, Ch. 201, L. 1973; Sec. 23-3023, R.C.M. 1947; R.C.M. 1947, 23-3012(part), 23-3023; amd. Sec. 22, Ch. 571, L. 1979; amd. Sec. 1, Ch. 161, L. 1995.

Compiler's Comments

1995 Amendment: Chapter 161 in (1), at beginning, inserted exception clause; inserted (5) allowing nondisclosure of addresses of officers and their spouses on registered voter lists; and made minor changes in style.

Cross-References

Registration lists exempt from prohibition against distribution or sale of lists of individuals, 2-6-109.

Registered elector competent to act as juror, 3-15-301.

Jury list selected from registered elector list, 3-15-402.

Close of registration, 13-2-301.

13-2-116. Precinct register. (1) Before each election, the election administrator shall prepare a precinct register for each precinct for use by the election judges. The register must contain an alphabetical list of the names, with addresses, of the registered electors, a space for the signature of the elector, and such other information as prescribed by the secretary of state.

(2) If some of the electors in a precinct are not eligible to receive all ballots at an election because of a combination of the elections of more than one political subdivision, the election administrator shall distinguish the names of those eligible for each ballot by whatever method will be clear and efficient.

(3) When several precincts have been combined at one polling place for an election, the election administrator may combine the electors from all precincts into one register or may provide separate registers for each precinct.

(4) Precinct registers need not be printed if the election will not be held.

History: (1) thru (3)En. Sec. 43, Ch. 368, L. 1969; R.C.M. 1947, 23-3024; amd. Sec. 23, Ch. 571, L. 1979; (4)En. Sec. 25, Ch. 571, L. 1979.

13-2-117. County governing body to provide election administrator with sufficient help. The county governing body must provide the election administrator with sufficient help for the duties imposed by this title. The cost of stationery, printing, publishing, and posting is a proper charge against the county.

History: En. Sec. 45, Ch. 368, L. 1969; amd. Sec. 13, Ch. 365, L. 1977; R.C.M. 1947, 23-3026; amd. Sec. 24, Ch. 571, L. 1979.

Cross-References

Costs of elections generally, 13-1-302.

13-2-118 through 13-2-120 reserved.

13-2-121. Repealed. Sec. 407, Ch. 571, L. 1979.

History: En. Sec. 46, Ch. 368, L. 1969; amd. Sec. 3, Ch. 243, L. 1971; R.C.M. 1947, 23-3027.

13-2-122. Charges for registers, elector lists, and mailing labels made available to public. (1) Except as provided in subsection (2), upon written request, the registrar shall furnish to any elector, for noncommercial use, a copy of the official precinct registers, a current list of registered electors, or mailing labels for registered electors. Upon delivery, the registrar may collect a charge not to exceed the actual cost of the register, list, or mailing labels.

(2) If the registrar receives in writing from a law enforcement officer or reserve officer, as defined in 7-32-201, a request that, for security reasons, the officer's and the officer's spouse's residential address, if the same as the officer's, not be disclosed, the registrar may not include the address on any register, list, or mailing labels disseminated pursuant to subsection (1).

History: **En. Sec. 47, Ch. 368, L. 1969; R.C.M. 1947, 23-3028; amd. Sec. 1, Ch. 66, L. 1983; amd. Sec. 2, Ch. 161, L. 1995.**

Compiler's Comments

1995 Amendment: Chapter 161 in (1), at beginning, inserted exception clause; and inserted (2) allowing nondisclosure of addresses of officers and their spouses on registers, lists, and mailing labels.

Cross-References

Registration lists exempt from prohibition against distribution or sale of lists of individuals, 2-6-109.

Part 2
Registration Procedures

13-2-201. Hours of registration. The election administrator's office shall be open for registration of electors from 8 a.m. until 5 p.m. on all regular working days. The office may be kept open for the registration of electors at other times at the discretion of the election administrator.

History: **En. Sec. 24, Ch. 368, L. 1969; amd. Sec. 1, Ch. 3, L. 1974; R.C.M. 1947, 23-3005(1); amd. Sec. 26, Ch. 571, L. 1979.**

13-2-202. Registration by personal appearance. An elector may register by appearing before the registrar and completing and signing the registration form.

History: **En. Sec. 25, Ch. 368, L. 1969; amd. Sec. 1, Ch. 396, L. 1975; amd. Sec. 40, Ch. 334, L. 1977; R.C.M. 1947, 23-3006(1); amd. Sec. 27, Ch. 571, L. 1979; amd. Sec. 2, Ch. 298, L. 1987; amd. Sec. 2, Ch. 390, L. 1993.**

13-2-203. Registration by mail. (1) A qualified individual may register by mailing, postage paid, a properly completed registration form to the election administrator in the county in which the individual resides.

(2) The election administrator shall send registration forms for mail registrations to all qualified individuals requesting them and shall, in addition, arrange for the forms to be widely and conveniently available within the county. The mail registration form must be designed as prescribed by the secretary of state. A form prescribed by the secretary of state explaining voter registration qualifications, deadlines, and purge information must be distributed with the mail registration form.

(3) The elector shall complete, sign, and return the mail registration form.

(4) The registration form must be received by the election administrator on or before the day of the close of registration and must be returned to the administrator no later than 15 days after the date it is signed.

(5) Registration forms properly executed before the close of registration must be accepted for 3 days after the close of registration.

History: **En. Sec. 25, Ch. 368, L. 1969; amd. Sec. 1, Ch. 396, L. 1975; amd. Sec. 40, Ch. 334, L. 1977; R.C.M. 1947, 23-3006(2) thru (6); amd. Sec. 28, Ch. 571, L. 1979; amd. Sec. 1, Ch. 396, L. 1985; amd. Sec. 2, Ch. 446, L. 1985; amd. Sec. 3, Ch. 390, L. 1993.**

Cross-References

Officers who may administer oaths, 1-6-101.

13-2-204. Repealed. Sec. 407, Ch. 571, L. 1979.

History: **En. Sec. 26, Ch. 368, L. 1969; R.C.M. 1947, 23-3007.**

13-2-205. Procedure when prospective elector not qualified at time of registration. An individual who is not eligible to register because of residence or age requirements but who will be eligible on or before election day may register if it appears that he will become qualified to vote by election day.

History: En. Sec. 27, Ch. 368, L. 1969; R.C.M. 1947, 23-3008(1); amd. Sec. 29, Ch. 571, L. 1979.

Cross-References

Qualifications of voter, 13-1-111.

U.S. citizenship required, 13-2-206.

13-2-206. Citizenship requirements. A person shall not be permitted to register until he attains United States citizenship.

History: En. Sec. 27, Ch. 368, L. 1969; R.C.M. 1947, 23-3008(2).

Cross-References

Qualified elector, Art. IV, sec. 2, Mont. Const.

Qualifications of voter, 13-1-111.

13-2-207. Notice of registration. (1) The election administrator shall give or mail to each elector a notice, affirming registration and giving the location of the elector's polling place. Mailed notices must conform to postal regulations to ensure return, not forwarding, of undelivered notices.

(2) The election administrator must investigate the reason for the return of any mailed notices and correct the address on the registration form and mail a new notice or cancel the registration of the elector if a diligent effort fails to locate the elector named on the registration form.

History: En. Sec. 30, Ch. 571, L. 1979; amd. Sec. 3, Ch. 298, L. 1987.

13-2-208 through 13-2-210 reserved.

13-2-211. Elector in the United States service defined. "Elector in the United States service" means:

(1) a member of the armed forces in the active service and his spouse and dependents;

(2) a member of the merchant marine of the United States and his spouse and dependents;

(3) a member of a religious group or welfare agency assisting members of the armed forces of the United States, who is officially attached to and serving the armed forces, and his spouse and dependents;

(4) a citizen of the United States temporarily residing outside the territorial limits of the United States and the District of Columbia and his spouse and dependents when residing with or accompanying him.

History: En. Sec. 136, Ch. 368, L. 1969; amd. Sec. 1, Ch. 249, L. 1971; R.C.M. 1947, 23-3718.

Cross-References

Special consideration allowed service personnel, Art. II, sec. 35, Mont. Const.

13-2-212. Registration of electors in the United States service. (1) An elector in the United States service who is absent from the state and the county of which he is a resident may register by mailing to the election administrator:

(a) the registration form, filled out and signed; or

(b) the federal post card application, filled out and signed.

(2) The form of the federal post card application, which may be used both as an application for registration and for a ballot, shall be prescribed by the secretary of state.

(3) An elector in the United States service who is absent from the state and county of which he is a resident may register to vote by federal post card application and vote by federal write-in absentee ballot for the next primary or general election up to noon on the day before the election.

History: (1)En. Sec. 25, Ch. 368, L. 1969; amd. Sec. 1, Ch. 396, L. 1975; amd. Sec. 40, Ch. 334, L. 1977; Sec. 23-3006, R.C.M. 1947; (2)En. Sec. 137, Ch. 368, L. 1969; Sec. 23-3719, R.C.M. 1947; R.C.M. 1947, 23-3006(7), 23-3719(2); amd. Sec. 31, Ch. 571, L. 1979; amd. Sec. 2, Ch. 396, L. 1985; amd. Sec. 1, Ch. 302, L. 1991.

Cross-References

Special consideration allowed service personnel, Art. II, sec. 35, Mont. Const.

13-2-213. Repealed. Sec. 5, Ch. 396, L. 1985.

History: En. Sec. 138, Ch. 368, L. 1969; amd. Sec. 1, Ch. 248, L. 1971; R.C.M. 1947, 23-3720; amd. Sec. 32, Ch. 571, L. 1979.

13-2-214. Classification of federal post card application. (1) Unless the elector is already registered, a federal post card application received from an elector in the United States service shall be treated as a simultaneous application for registration and for ballot for each primary and general election in which he is entitled to vote during the year of its receipt.

(2) Upon receipt by the election administrator of a federal post card application, properly filled out and signed, the election administrator shall:

(a) classify the application according to the precinct in which the elector resides or, if the information is insufficient to determine precinct of residence, assign an appropriate precinct;

(b) immediately enter all information in the registration records of the office and either file the post card application with regular registration forms or file a photocopy attached to a regular registration form on which the information has been entered;

(c) send to the applicant by the fastest mail service available a notice that he has been registered and informing him that a ballot is enclosed or that he will be mailed an absentee ballot for the next election in which he is entitled to vote under subsection (1).

(3) The election administrator may use photocopies of the post card application to complete all necessary records.

History: En. Sec. 139, Ch. 368, L. 1969; amd. Sec. 1, Ch. 250, L. 1971; R.C.M. 1947, 23-3721; amd. Sec. 33, Ch. 571, L. 1979; amd. Sec. 3, Ch. 396, L. 1985.

Cross-References

Special consideration allowed service personnel, Art. II, sec. 35, Mont. Const.

13-2-215. Registration of electors whose United States service or employment has terminated. Electors in the United States service who have been honorably discharged from the armed forces of the United States or who have terminated their service or employment outside the territorial limits of the United States too late to register at the time when and place where registration is required shall be entitled to register for the purpose of voting at the next ensuing election after such discharge or termination of employment up to noon on the day before the election. Said elector shall execute a sworn affidavit qualifying him under this section to be filed in the office of his registration. The county registrar shall provide to the person registering under the provisions of this section a certificate stating the precinct in which he is entitled to vote. This certificate shall be presented to the election judges of that precinct at the time of voting.

History: En. 23-3724 by Sec. 1, Ch. 247, L. 1971; R.C.M. 1947, 23-3724.

Cross-References

Special consideration allowed service personnel, Art. II, sec. 35, Mont. Const.

Part 3
Close of Registration

13-2-301. Close of registration — procedure. (1) The election administrator shall:

(a) close registrations for 30 days before any election, except as provided in 13-2-212(3); and

(b) publish a notice specifying the day registrations will close on radio or television as provided in 2-3-105 through 2-3-107 or in a newspaper of general circulation in the county at least once a week for 3 weeks before the close of registration.

(2) Information to be included in the notice shall be prescribed by the secretary of state.

(3) An individual who submits a completed registration form to the election administrator before the deadline provided in subsection (1)(a) is allowed to correct a mistake on the completed registration form until 5 p.m. on the 10th day following the close of registration, and thereafter the qualified elector is eligible to vote in the next election.

History: En. Sec. 35, Ch. 368, L. 1969; amd. Sec. 1, Ch. 385, L. 1971; R.C.M. 1947, 23-3016; amd. Sec. 34, Ch. 571, L. 1979; amd. Sec. 3, Ch. 446, L. 1985; amd. Sec. 2, Ch. 302, L. 1991.

Cross-References

Times for holding general elections, 13-1-104.

Times for holding primary elections, 13-1-107.

Filing of nominating petitions for supervisor of conservation district, 76-15-302.

13-2-302. Registration immediately before an election. An individual may register during the time when registration is closed preceding any election, and the election administrator shall keep his registration form in a separate file until it can be properly entered after the election.

History: En. Sec. 36, Ch. 368, L. 1969; R.C.M. 1947, 23-3017; amd. Sec. 35, Ch. 571, L. 1979.

13-2-303. Repealed. Sec. 407, Ch. 571, L. 1979.

History: En. Sec. 9, Ch. 368, L. 1969; amd. Sec. 25, Ch. 342, L. 1977; amd. Sec. 5, Ch. 365, L. 1977; R.C.M. 1947, 23-2704.

Part 4
Cancellation and Challenge of Registration

13-2-401. Cancellation of registration for failure to vote — reregistration. (1) Except as provided in subsection (3), within 60 days after every general election in which a president is elected, the election administrator shall:

(a) cancel the registration of the electors who have not voted in each precinct, as shown by the official pollbook and precinct register of each precinct;

(b) mark the form of each elector whose registration has been canceled; and

(c) place canceled forms for the entire county in alphabetical order in the canceled file.

(2) An elector whose registration is canceled may reregister in the same manner as if he were registering for the first time.

(3) The registration of an elector who votes by absentee ballot but whose ballot does not arrive in time to be counted may not be canceled if his ballot is received and rejected by the election administrator within 10 days succeeding the election.

(4) A notice of cancellation shall be published on radio or television as provided in 2-3-105 through 2-3-107 or in a newspaper of general circulation in the county once a week for 2 weeks prior to the date of cancellation. The notice shall be run in a display advertisement (known as ROP in the trade) if in a newspaper or as an announcement if on radio or television and shall be in a form prescribed by the secretary of state. The names of those electors whose registration has been canceled need not be published.

History: En. Sec. 32, Ch. 368, L. 1969; amd. Sec. 1, Ch. 254, L. 1971; amd. Sec. 1, Ch. 215, L. 1973; amd. Sec. 1, Ch. 369, L. 1977; R.C.M. 1947, 23-3013; amd. Sec. 36, Ch. 571, L. 1979; amd. Sec. 4, Ch. 446, L. 1985.

13-2-402. Other reasons for cancellation. The election administrator shall cancel the registration of an elector:

(1) at the written request of the registered elector;

(2) if a certificate of the death of the elector is filed or if the elector is reported as deceased by the department of public health and human services in the department's reports submitted to the county under 72-16-217;

(3) if the elector is of unsound mind as established by a court;

(4) if the incarceration of the elector in a penal institution for a felony conviction is legally established;

(5) if a certified copy of a court order directing the cancellation is filed with the election administrator;

(6) if the elector is successfully challenged and not allowed to vote at an election upon determination of an election judge; or

(7) if a notice is received from another county or state that the elector has registered in that county or state.

History: En. Sec. 33, Ch. 368, L. 1969; amd. Sec. 1, Ch. 299, L. 1971; amd. Sec. 10, Ch. 365, L. 1977; R.C.M. 1947, 23-3014(1); amd. Sec. 37, Ch. 571, L. 1979; amd. Sec. 48, Ch. 575, L. 1981; amd. Sec. 38, Ch. 418, L. 1995; amd. Sec. 42, Ch. 546, L. 1995.

Compiler's Comments

1995 Amendments: Chapter 418 in (2) substituted "department of public health" for "department of health and environmental sciences"; and made minor changes in style. Amendment effective July 1, 1995.

Chapter 546 in (2) substituted "department of public health and human services" for "department of health and environmental sciences". Amendment effective July 1, 1995.

Cross-References

Qualified elector, Art. IV, sec. 2, Mont. Const.

Qualifications of voter, 13-1-111.

Effect of conviction, 46-18-801.

13-2-403. Challenge of registration. (1) Forty-five or more days before the close of registration for an election, three registered electors of a precinct may challenge the registration of an elector by filing affidavits giving the name of the elector whose registration is challenged, the address at which he is registered, and a statement that the affiant has personal knowledge that the elector does not reside at the address where registered.

(2) No later than 3 days after the filing of affidavits as provided in subsection (1), the election administrator must send written notice to the elector whose registration is challenged, at the address shown on the registration form. The notice must state that registration will be canceled within 15 days of the filing of the affidavits unless the elector refutes the affidavits by submitting proof or a sworn statement that he resides at the address given on his registration form.

(3) The election administrator must cancel the registration of an elector whose registration is challenged under this section 15 days after the filing of the affidavits required in subsection (1) unless proof or a sworn statement as required in subsection (2) is received.

(4) If an elector proves or swears he resides at the address given on his registration form after his registration has been canceled as provided in this section, he may reregister by completing a new registration form. Such registration shall be effective for the next election even though the registration for that election is closed.

History: En. Sec. 33, Ch. 368, L. 1969; amd. Sec. 1, Ch. 299, L. 1971; amd. Sec. 10, Ch. 365, L. 1977; R.C.M. 1947, 23-3014(2); amd. Sec. 38, Ch. 571, L. 1979.

Cross-References

Challenges on election day, 13-13-301.

13-2-404. Challenges prior to election. (1) If an elector believes another elector fails to meet the qualifications required in 13-1-111, he may challenge the right of that elector to vote any time not later than 20 days prior to an election. The challenge must:

(a) be filed with the election administrator and be signed by the elector;

(b) be verified by the affidavit of the elector that the elector designated is not entitled to vote;

(c) state the grounds of the challenge, objection, and disqualification.

(2) The election administrator shall:

(a) file the affidavit of challenge in his office;

(b) deliver a correct copy of the affidavit to the judges of election, together with the precinct register;

(c) write in the precinct register beside the name of any individual whose qualifications are challenged the words "to be challenged";

(d) notify the elector within 5 days by certified or registered mail that his qualifications as an elector have been challenged.

History: En. Sec. 34, Ch. 368, L. 1969; amd. Sec. 11, Ch. 365, L. 1977; R.C.M. 1947, 23-3015(1), (2); amd. Sec. 39, Ch. 571, L. 1979.

Cross-References

Qualified elector, Art. IV, sec. 2, Mont. Const.

Challenges on election day, 13-13-301.

Vote by challenged elector, 13-13-311.

Challenges in school elections, 20-20-303.

Part 5
Transfer of Registration

13-2-501. Renumbered 13-2-511 by Code Commissioner, 1979.

13-2-502. Renumbered 13-2-513 by Code Commissioner, 1979.

13-2-503. Renumbered 13-2-515 by Code Commissioner, 1979.

13-2-504 through 13-2-510 reserved.

13-2-511. Transferring registration or changing name. An elector shall notify the election administrator of a change in residence within the county or a change in name by using a transfer form provided by the election administrator or by completing the changed information on a registration or mail registration form. The form must be signed and affirmed or verified as required on the form. If a registration or mail registration form is used, it must be clearly marked "for transfer of address" or "for change of name" in a space provided on the form for that purpose.

History: En. Sec. 28, Ch. 368, L. 1969; R.C.M. 1947, 23-3009; amd. Sec. 40, Ch. 571, L. 1979; Sec. 13-2-501, MCA 1979; redes. 13-2-511 by Code Commissioner, 1979.

13-2-512. Right to vote when precinct or name changed. (1) An elector who has changed his residence to a different precinct within the same county and has failed to notify the election administrator of the change by a transfer or new registration form may vote in the precinct where he is registered at the first election at which he offers to vote after the change unless his registration has been canceled as provided in 13-2-207, 13-2-401, or 13-2-402.

(2) An elector still residing in the same precinct where registered whose name has changed and who has failed to notify the election administrator of the change by a new registration form may vote under his former name at the first election at which he offers to vote after the change unless his registration has been canceled as provided in 13-2-207, 13-2-401, or 13-2-402.

(3) The elector must state his correct residence address and name when offering to vote and must complete a transfer form or new registration form to make the necessary correction before being allowed to sign the precinct register and vote.

History: En. Sec. 41, Ch. 571, L. 1979.

13-2-513. Procedure for transferring registration. The election administrator shall make the necessary corrections in the registration records in his office when he receives a transfer form or corrected registration form if he is satisfied the form is valid. The original registration form may be fastened to the back of the new form, in which case the original and current forms must be retained, or the original registration form may be marked "canceled" and filed in a canceled file.

History: En. Sec. 29, Ch. 368, L. 1969; R.C.M. 1947, 23-3010; amd. Sec. 42, Ch. 571, L. 1979; Sec. 13-2-502, MCA 1979; redes. 13-2-513 by Code Commissioner, 1979.

13-2-514. Change of residence to another county. (1) An elector who changes his residence to a different county within this state must register in his new county of residence in order to vote in any election unless the change occurs less than 45 days before the election.

(2) An elector who changes his residence to a different county 45 days or less before an election may vote in person or by absentee ballot in the precinct and county where previously registered.

(3) The elector must state his correct name and residence address and date of residence change when offering to vote or when applying for an absentee ballot. The election administrator shall note the information on the elector's registration form if an absentee ballot application is received. The election judges shall note the change of address and date of residence change in the precinct register if the elector votes in person.

(4) The registration of an elector who votes under the provisions of subsection (2) of this section shall be canceled after the election.

History: **En. Sec. 43, Ch. 571, L. 1979.**

Cross-References

Qualified elector, Art. IV, sec. 2, Mont. Const.

Qualifications of voter, 13-1-111.

13-2-515. Inquiry as to previous registration — notices of changes. (1) The election administrator shall check each new registration to ascertain whether the elector has listed previous registration in another county of this state or another state. If the elector has been previously registered, the election administrator shall enter his name on a notice or may photocopy the registration form.

(2) At least once a week and not more than 3 days after the close of registration, the election administrator shall forward the notices or photocopies for counties in this state to the election administrator of the county where the elector was previously registered. A list or other record shall be kept of notices or photocopies sent.

(3) Once a month and not more than 3 days after the close of registration, the election administrator shall forward the notices or photocopies for other states to the secretary of state or chief election official of the state where the elector was previously registered. A list or other record shall be kept of notices or photocopies sent.

History: **En. Sec. 30, Ch. 368, L. 1969; R.C.M. 1947, 23-3011; amd. Sec. 44, Ch. 571, L. 1979; Sec. 13-2-503, MCA 1979; redes. 13-2-515 by Code Commissioner, 1979.**

Part 6
Effect of Registration

13-2-601. Name on precinct register prima facie evidence of right to vote. (1) An elector may not vote at an election mentioned in this title unless his name appears on election day in the copy of the official precinct register furnished by the election administrator to the election judges. The fact that his name appears in the copy of the precinct register is prima facie evidence of his right to vote.

(2) The name of an elector who has been assigned to vote in a precinct other than the precinct in which he is registered, as provided in 13-3-213, must be printed on a special addendum to the precinct register in a form prescribed by the secretary of state. The fact that an elector's name appears on a special addendum to the precinct register is prima facie evidence of his right to vote in the precinct.

History: **En. Sec. 37, Ch. 368, L. 1969; amd. Sec. 12, Ch. 365, L. 1977; R.C.M. 1947, 23-3018(1); amd. Sec. 45, Ch. 571, L. 1979; amd. Sec. 11, Ch. 200, L. 1987.**

13-2-602. Joinder of parties in proceedings to compel entry of name in register. In any action or proceeding instituted in a district court to compel the registrar to enter the name of any elector in the precinct register, as many persons may be joined as plaintiffs for cause of action and as many persons as there are causes of action may be joined as defendants.

History: **En. Sec. 38, Ch. 368, L. 1969; R.C.M. 1947, 23-3019.**

13-2-603. Erroneous omission of name from precinct register. (1) An elector whose name is erroneously omitted from a precinct register or other election register may secure from the election administrator a certificate of the error, stating the precinct in which he is entitled to vote, and present the certificate which will entitle him to vote to the election judges.

(2) The certificate shall be marked "voted" by the election judges and returned by them with the precinct register.

(3) If the elector's polling place is not located in the city where the election administrator's office is located, the elector may vote by signing an oath that his name was erroneously omitted if the election administrator can confirm such omission by telephone to the chief election judge of the precinct.

History: **En. Sec. 39, Ch. 368, L. 1969; R.C.M. 1947, 23-3020; amd. Sec. 46, Ch. 571, L. 1979.**

CHAPTER 3

PRECINCTS AND POLLING PLACES

Part 1 — Designation of Precincts and Polling Places

13-3-101. Establishment of election precincts.
13-3-102. Change of precinct boundaries.
13-3-103. Certification of boundary changes.
13-3-104. Precincts, wards, and election districts.
13-3-105. Designation of polling place.

Part 2 — Accessibility of Polling Places

13-3-201. Purpose.
13-3-202. Definitions.
13-3-203. Duty of secretary of state — rulemaking.
13-3-204. Exceptions.
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13-3-207. Polling place classifications.
13-3-208 through 13-3-210 reserved.
13-3-211. Emergency exemption.
13-3-212. Exemption if no accessible polling place is available.
13-3-213. Alternative means for casting ballot.

Chapter Cross-References

Number of qualified electors, Art. III, sec. 7, Mont. Const.

Legislative districting and apportionment, Art. V, sec. 14, Mont. Const.

Reapportionment Commission, Title 5, ch. 1, part 1.

Definitions applicable to this chapter, 13-1-101.

Part 1

Designation of Precincts and Polling Places

13-3-101. Establishment of election precincts. (1) The territorial unit for elections is the election precinct. All election precincts shall be designated by numbers, names, or both.

(2) The governing body of each county shall establish a convenient number of election precincts, equalizing the number of electors in each precinct as nearly as possible.

History: En. Sec. 18, Ch. 368, L. 1969; amd. Sec. 1, Ch. 171, L. 1973; R.C.M. 1947, 23-3101(1), (2), (3)(b); amd. Sec. 47, Ch. 571, L. 1979.

13-3-102. Change of precinct boundaries. (1) The county governing body may change the boundaries of precincts, but not within 100 days before any primary or between a general election and the primary for that election. When the changes are required to make precinct boundaries conform to legislative district boundaries following the adoption of a districting and apportionment plan under Article V, section 14, of the 1972 Montana constitution or other district boundaries changed by the districting and apportionment plan, the changing of precinct boundaries must be accomplished within 45 days of the filing of the final plan.

(2) All changes must be certified to the election administrator 3 days or less after the change is made.

(3) The officials responsible for preparing a districting and apportionment plan shall consider the problems of conforming present precinct boundaries to the new districts as well as existing boundaries of wards, school districts, and other districts. The election administrator of counties involved in the plan shall be consulted before adoption of the final plan.

History: En. Sec. 18, Ch. 368, L. 1969; amd. Sec. 1, Ch. 171, L. 1973; R.C.M. 1947, 23-3101(3)(a), (4); amd. Sec. 48, Ch. 571, L. 1979.

13-3-103. Certification of boundary changes. (1) Not more than 10 days after an order of the governing body has established or changed the boundaries of an election precinct, the governing body shall cause to be prepared and delivered to the election administrator a written legal description and a map showing the borders of all precincts and districts in which elections are held within the county.

(2) Not more than 10 days after school district or other election district boundaries have been changed, the governing body making the change shall certify any changes or alterations in the boundaries to the election administrator and deliver a written legal description and a map showing boundaries of the wards, school districts, or other election districts. The map must be sufficiently detailed to clearly identify the wards or districts and the territory included in each.

History: (1)En. Sec. 18, Ch. 368, L. 1969; amd. Sec. 1, Ch. 171, L. 1973; Sec. 23-3101, R.C.M. 1947; (2)En. Sec. 19, Ch. 368, L. 1969; Sec. 23-3102, R.C.M. 1947; R.C.M. 1947, 23-3101(3)(c), 23-3102; amd. Sec. 49, Ch. 571, L. 1979.

Cross-References

Districting and apportionment, Title 5, ch. 1.

13-3-104. Precincts, wards, and election districts. (1) A ward or election district may be divided into two or more precincts, and a precinct may be divided into two or more polling places.

(2) Precincts may include two or more adjoining wards or election districts, together with contiguous territory lying outside the municipality or district, if provision can be made for clearly identifying the electors eligible to vote in each ward or district.

History: En. Sec. 18, Ch. 368, L. 1969; amd. Sec. 1, Ch. 171, L. 1973; R.C.M. 1947, 23-3101(5), (6); amd. Sec. 50, Ch. 571, L. 1979.

13-3-105. Designation of polling place. (1) The county governing body shall designate the polling place for each precinct no later than 30 days before a primary election. The same polling place shall be used for both the primary and general election if at all possible. Changes may be made by the governing body in designated polling places up to 10 days before an election if a designated polling place is not available. Polling places may be located outside the boundaries of a precinct.

(2) Not more than 10 or less than 2 days before an election, the election administrator shall publish in a newspaper of general circulation in the county, a statement of the locations of the precinct polling places. The election administrator shall include in the published notice the accessibility designation for each polling place according to the classification in 13-3-207. Notice may also be given as provided in 2-3-105 through 2-3-107.

(3) An election administrator may make changes in the location of a polling place if an emergency occurs 10 days or less before an election. Notice shall be posted at both the old and new polling places, and other notice may be given by whatever means available.

(4) Any publicly owned building may be used as a polling place. Such building must be furnished at no charge as long as no structural changes are required in order to use the building as a polling place.

History: En. Sec. 20, Ch. 368, L. 1969; amd. Sec. 1, Ch. 169, L. 1974; R.C.M. 1947, 23-3103; amd. Sec. 51, Ch. 571, L. 1979; amd. Sec. 1, Ch. 562, L. 1981; amd. Sec. 12, Ch. 200, L. 1987.

Cross-References

Election on questions of municipal indebtedness — polling places, 7-7-4103.

Part 2

Accessibility of Polling Places

13-3-201. Purpose. The purpose of this part is to promote the fundamental right to vote by improving access for handicapped and elderly individuals to polling places. The provisions of this part acknowledge that, in certain cases, it may not be possible to locate a polling place that meets the standards for accessibility, either because no accessible polling place exists or, if it does, its location in the precinct would require undue travel for a majority of the electors. In those cases when an accessible polling place is not available, this part provides handicapped and elderly voters an alternative means for casting a ballot on election day.

History: En. Sec. 1, Ch. 200, L. 1987.

13-3-202. Definitions. As used in this part, unless the context indicates otherwise, the following definitions apply:

(1) "Accessible" means accessible to handicapped and elderly individuals for purposes of voting as determined in accordance with standards established by the secretary of state under 13-3-205.

(2) "Elderly" means 65 years of age or older.

(3) "Election" means a general, special, or primary election held in an even-numbered year, as provided for in 13-1-104(1) and 13-1-107(1).

(4) "Handicapped" means having a temporary or permanent physical impairment such as:

(a) impaired vision;

(b) impaired hearing; or

(c) impaired mobility. Individuals having impaired mobility include those who require use of a wheelchair and those who are ambulatory but are physically impaired due to age, disability, or disease.

History: En. Sec. 2, Ch. 200, L. 1987.

13-3-203. Duty of secretary of state — rulemaking. (1) Except as provided in 13-3-204, the secretary of state shall assure that all polling places are accessible to handicapped and elderly electors on election day.

(2) The secretary of state shall adopt rules to establish standards that a polling place must meet in order to be designated accessible under this part.

(3) The secretary of state may adopt any other rules necessary for implementation of this part.

History: En. Sec. 3, Ch. 200, L. 1987.

Cross-References

Adoption and publication of rules, Title 2, ch. 4, part 3.

13-3-204. Exceptions. Section 13-3-203 does not apply to a polling place that:

(1) is a rural polling place as defined in 13-3-207;

(2) has been granted an emergency exemption as provided in 13-3-211; or

(3) is declared exempt under 13-3-212 because no accessible polling place is available.

History: En. Sec. 4, Ch. 200, L. 1987.

13-3-205. Adoption of standards for polling place accessibility — rulemaking authority. The secretary of state, with advice from election administrators and handicapped and elderly individuals, shall establish standards for accessibility of polling places. The standards, whenever possible, must be consistent with the standards for accessibility established by the American national standards institute and the uniform federal accessibility standards.

History: En. Sec. 5, Ch. 200, L. 1987.

Cross-References

Adoption and publication of rules, Title 2, ch. 4, part 3.

13-3-206. Survey of polling places to determine accessibility — procedures. (1) Except as provided in 13-3-207 and 13-3-211, the election administrator in each county shall conduct an onsite survey of each polling place used in an election to determine whether such polling place meets the standards for accessibility established under 13-3-205.

(2) Each election administrator shall conduct the survey in a manner that represents the path of travel an elector would reasonably be expected to take in order to reach the polling place on election day.

(3) A polling place that has been surveyed and designated as accessible need not be surveyed again so long as the conditions of accessibility remain unchanged.

History: **En. Sec. 6, Ch. 200, L. 1987.**

13-3-207. Polling place classifications. (1) As a result of the survey provided in 13-3-206, each polling place must be classified as:

(a) accessible;

(b) inaccessible;

(c) technically inaccessible but usable; or

(d) rural.

(2) An accessible polling place is one that meets the standards for accessibility established by the secretary of state under 13-3-205.

(3) An inaccessible polling place is one that does not meet the standards for accessibility and cannot be made accessible through safe, practical, and cost-effective methods.

(4) A technically inaccessible but usable polling place is one that does not meet all the standards for accessibility but has been surveyed, evaluated, and certified as being adequate for use as a polling place. Such certification is cause for the secretary of state to grant the polling place an exemption from the standards for accessibility. However, in a future election, the secretary of state may issue an objection to the criteria used for determining that the facility is usable as a polling place.

(5) A rural polling place is one that serves less than 200 registered electors and is:

(a) granted an exemption from the standards for accessibility established under 13-3-205; and

(b) subject to review and redesignation 45 days prior to an election.

(6) A rural designation may not be construed as cause for denying handicapped or elderly electors at a polling place the right to choose an alternative means for casting a ballot on election day as provided in 13-3-213.

History: **En. Sec. 7, Ch. 200, L. 1987.**

13-3-208 through 13-3-210 reserved.

13-3-211. Emergency exemption. (1) The secretary of state shall exempt a polling place from the requirements of this part if an emergency occurs within 10 days prior to an election. An emergency is considered to exist if a polling place becomes unavailable by reason of loss of lease, fire, snow, or natural disaster.

(2) If an emergency occurs, the election administrator in the county shall designate a new polling place in accordance with the procedure provided in 13-3-105. The new polling place must be considered temporary and must be exempt from the survey procedures established under 13-3-206. However, such polling place may not be used in a subsequent election unless it is surveyed as required in 13-3-206.

History: **En. Sec. 8, Ch. 200, L. 1987.**

13-3-212. Exemption if no accessible polling place is available. (1) If an existing polling place has been surveyed and designated as being inaccessible, the election administrator shall make a reasonable effort to locate and survey all potential sites with comparable utility as a polling place.

(2) The election administrator shall request in writing to the secretary of state that an inaccessible polling place be exempt from the standards for accessibility if:

(a) all potential polling places have been surveyed and it is determined that no accessible polling place is available; and

(b) the county cannot safely or reasonably make a polling place temporarily accessible in the area involved.

(3) Nothing in this section may require an election administrator to select an accessible facility as a polling place if its location requires excessive travel or imposes other hardships for the majority of qualified electors in the precinct.

History: **En. Sec. 9, Ch. 200, L. 1987.**

13-3-213. Alternative means for casting ballot. (1) The election administrator shall provide handicapped and elderly individuals an alternative means for casting a ballot on election day if they are assigned to an inaccessible polling place. These alternative means for casting a ballot include:

(a) delivery of a ballot to the elector as provided in 13-13-118;

(b) voting by absentee ballot as provided in 13-13-222; and

(c) prearranged assignment to an accessible polling place within the county.

(2) Any handicapped or elderly elector assigned to an inaccessible polling place who desires to vote at an accessible polling place:

(a) shall request assignment to an accessible polling place by notifying the election administrator in writing at least 7 days preceding the election;

(b) must be assigned to the nearest accessible polling place or technically inaccessible polling place for the purpose of voting in the election;

(c) shall sign his name on a special addendum to the official precinct register as required in 13-2-601; and

(d) shall receive the same ballot to which he is otherwise entitled.

(3) For the purpose of subsection (2), the ballot cast at an alternative polling place must be processed and counted in the same manner as an absentee ballot.

History: **En. Sec. 10, Ch. 200, L. 1987.**

CHAPTER 4

ELECTION JUDGES

Part 1 — Appointment

13-4-101. Appointment of election judges — other boards of election judges.
13-4-102. Manner of choosing election judges.
13-4-103. Judges to serve until others appointed.
13-4-104. Election administrator to notify judges.
13-4-105. Oath of judges.

13-4-106. Compensation of judges.
13-4-107. Qualifications of election judges.

Part 2 — Functions

13-4-201. Duties of chief election judge.
13-4-202. Administration of oaths.
13-4-203. Instruction of judges — training materials.
13-4-204. Repealed.
13-4-205. Repealed.
13-4-206. Repealed.
13-4-207. Judges to remain at polls — emergency provisions — part-time service.

Chapter Cross-References

Definitions applicable to this chapter, 13-1-101.

Criminal provisions relating to conduct of election officials and judges, 13-35-202.

Part 1
Appointment

13-4-101. Appointment of election judges — other boards of election judges. (1) At least 30 days before the primary election in even-numbered years, the county governing body shall appoint 3 or more election judges for each precinct, one of whom shall be designated chief judge.

(2) A board of election judges, designated as a counting board, may be appointed in any precinct if recommended by the election administrator.

(3) A board of election judges, designated as a counting board for absentee ballots, may be appointed to count all absentee ballots for all precincts if recommended by the election administrator.

History: En. Sec. 49, Ch. 368, L. 1969; amd. Sec. 1, Ch. 258, L. 1971; R.C.M. 1947, 23-3201(part); amd. Sec. 52, Ch. 571, L. 1979; amd. Sec. 1, Ch. 120, L. 1983.

Cross-References

Time for primary elections, 13-1-107.

Procedure for electors absent from polling place, Title 13, ch. 13, part 2.

Duties of Counting Board, 13-15-103.

13-4-102. Manner of choosing election judges. (1) Election judges shall be chosen from lists of qualified registered electors for each precinct in the county, submitted at least 45 days before the primary election in even-numbered years by the county central committees of the political parties eligible to nominate candidates in the primary.

(2) The list of each party may contain more names than the number of election judges to be appointed. The names of those not appointed as election judges shall be given to the election administrator for use in making appointments to fill vacancies.

(3) Each board of election judges shall contain judges representing all parties that have submitted lists as provided in subsection (1). No more than a majority may be appointed from the list of one political party in each precinct. If any of the political parties entitled to do so fail to submit a list, the governing body shall, insofar as possible, appoint judges so that all parties eligible to participate in the primary are represented on each board.

(4) The election administrator shall make appointments to fill vacancies from the list provided for in subsection (2). If the list is insufficient or if one or

more of the eligible political parties fails to submit a list, the election administrator may randomly select, either by manual drawing or by computer, sufficient qualified registered electors in the county to fill election judge vacancies in all precincts.

(5) An elector chosen to potentially serve as an election judge must be notified of selection at least 30 days before the primary election in even-numbered years. Each elector who agrees to serve as an election judge shall attend a training class conducted under 13-4-203 and shall continue to serve as assigned by the election administrator for 2 years.

History: En. Sec. 50, Ch. 368, L. 1969; amd. Sec. 2, Ch. 258, L. 1971; amd. Sec. 1, Ch. 125, L. 1973; R.C.M. 1947, 23-3202; amd. Sec. 54, Ch. 571, L. 1979; amd. Sec. 1, Ch. 232, L. 1993.

Cross-References

Registration lists, 13-2-115.

Political parties eligible to nominate candidates in primary election, 13-10-601.

13-4-103. Judges to serve until others appointed. The election judges continue to be judges of all elections held in their precincts until other judges are appointed.

History: En. Sec. 51, Ch. 368, L. 1969; amd. Sec. 3, Ch. 258, L. 1971; R.C.M. 1947, 23-3203; amd. Sec. 55, Ch. 571, L. 1979.

13-4-104. Election administrator to notify judges. The election administrator must notify the judges of their appointment and of the time set for instruction sessions.

History: En. Sec. 52, Ch. 368, L. 1969; amd. Sec. 4, Ch. 258, L. 1971; R.C.M. 1947, 23-3204(1); amd. Sec. 56, Ch. 571, L. 1979.

Cross-References

Notification to county political party chairmen, 13-4-203.

13-4-105. Oath of judges. Before beginning service on each election day, the election judges must take and subscribe the official oath prescribed by the constitution. The election judges may administer the oath to each other.

History: En. Sec. 53, Ch. 368, L. 1969; R.C.M. 1947, 23-3205(1); amd. Sec. 57, Ch. 571, L. 1979; amd. Sec. 2, Ch. 232, L. 1993.

Cross-References

Oath of office, Art. III, sec. 3, Mont. Const.

13-4-106. Compensation of judges. (1) Except as provided in subsection (2), election judges must be paid at the prevailing federal minimum wage for the number of hours worked during an election plus the number of hours spent at the instruction session. Mileage may be paid to election judges for attending instruction sessions.

(2) The chief election judge may be paid at a rate higher than the other election judges and may be reimbursed for the actual expenses of transporting election materials.

(3) The election administrator shall certify the amount due each election judge to the county governing body as soon after an election as all records necessary for the certification are received.

History: En. Sec. 55, Ch. 368, L. 1969; R.C.M. 1947, 23-3207; amd. Sec. 58, Ch. 571, L. 1979; amd. Sec. 7, Ch. 591, L. 1991; amd. Sec. 1, Ch. 195, L. 1995.

Compiler's Comments

1995 Amendment: Chapter 195 deleted last sentence in (1) that read: "Election judges are exempt from unemployment insurance coverage for services performed pursuant to this chapter"; and made minor changes in style. Amendment effective January 1, 1996.

Applicability: Section 19, Ch. 195, L. 1995, provided: "[This act] applies to hearings or appeals requested on or after [the effective date of sections 2 through 10 and 12 through 19]." Sections effective March 23, 1995.

Contingent Termination: Section 21, Ch. 195, L. 1995, provided: "If 26 U.S.C. 3304 is amended to no longer require that election judges receive unemployment insurance coverage, then [section 1 of this act] [13-4-106] terminates on the date on which the U.S.C. amendment is effective." The effect of the termination would be to reinsert the following sentence at the end of (1): "Election judges are exempt from unemployment insurance coverage for services performed pursuant to this chapter."

Cross-References

Mileage and expenses, Title 2, ch. 18, part 5.

13-4-107. Qualifications of election judges. (1) Election judges shall be registered electors of the county and of the precinct in which they serve, except as provided in 13-4-102(4).

(2) No election judge may be a candidate or a spouse, ascendant, descendant, brother, or sister of a candidate or a candidate's spouse or the spouse of any of these in an election precinct where the candidate's name appears on the ballot. However, this does not apply to candidates for precinct offices.

History: En. Sec. 53, Ch. 571, L. 1979.

Part 2
Functions

13-4-201. Duties of chief election judge. The chief election judge shall be responsible for the conduct of the proceedings in the polling place, shall assign duties to other members of the board of election judges, and, if assigned to work through the close of the polls, shall be responsible for the return of or for arranging the return of all ballots and election supplies to the election administrator.

History: En. Sec. 52, Ch. 368, L. 1969; amd. Sec. 4, Ch. 258, L. 1971; R.C.M. 1947, 23-3204(2), (3); amd. Sec. 59, Ch. 571, L. 1979; amd. Sec. 3, Ch. 232, L. 1993.

13-4-202. Administration of oaths. Any election judge may administer and certify oaths required during an election.

History: En. Sec. 53, Ch. 368, L. 1969; R.C.M. 1947, 23-3205(2); amd. Sec. 60, Ch. 571, L. 1979.

13-4-203. Instruction of judges — training materials. (1) Before each election, all election judges who do not possess a current certificate of instruction shall be instructed by the election administrator. In precincts where voting machines or devices are used, instructions shall cover both machines or devices and paper ballots.

(2) Chief judges may be required to attend the training session before each election, as well as a special session that may be held for chief judges only.

(3) Any individual willing to be appointed an election judge may attend an instruction session by registering with the election administrator. Such individuals may not be paid for attendance unless they are appointed election judges.

(4) The secretary of state shall prepare and distribute training materials for election judges. The materials shall include instructions on the use of all

machines or devices approved for use in this state, as well as paper ballots. Enough copies of the materials to supply all election judges in the county and provide a small extra supply shall be sent to each election administrator. The secretary of state shall hold at least one workshop every 2 years to instruct election administrators and their staffs in use of the materials. Workshops may be held in various locations around the state. Costs of the materials and workshops shall be paid by the secretary of state.

(5) Each election judge completing a training session shall be given a certificate of completion. No individual may serve as an election judge without a valid certificate. However, this does not apply to individuals filling vacancies in emergencies.

(6) All certificates of completion expire 30 days before the primary election in even-numbered years.

(7) Notice of place and time of instruction must be given by the election administrator to the county chairmen of the political parties.

History: En. Sec. 54, Ch. 368, L. 1969; amd. Sec. 5, Ch. 258, L. 1971; R.C.M. 1947, 23-3206; amd. Sec. 61, Ch. 571, L. 1979.

Cross-References

Notification to judges, 13-4-104.

13-4-204. Repealed. Sec. 407, Ch. 571, L. 1979.

History: En. Sec. 49, Ch. 368, L. 1969; amd. Sec. 1, Ch. 258, L. 1971; R.C.M. 1947, 23-3201(part).

13-4-205. Repealed. Sec. 407, Ch. 571, L. 1979.

History: En. Sec. 49, Ch. 368, L. 1969; amd. Sec. 1, Ch. 258, L. 1971; R.C.M. 1947, 23-3201(3).

13-4-206. Repealed. Sec. 407, Ch. 571, L. 1979.

History: En. Sec. 49, Ch. 368, L. 1969; amd. Sec. 1, Ch. 258, L. 1971; R.C.M. 1947, 23-3201(4).

13-4-207. Judges to remain at polls — emergency provisions — part-time service. (1) Election judges may not leave the premises on which the polling place is located during the hours they are assigned to work unless permission to leave is given by the chief election judge for that precinct. Permission may be granted only for illness or a family emergency.

(2) A chief election judge must obtain the permission of the election administrator to leave the polling place premises because of illness or an emergency. If the chief judge is excused, the election administrator shall appoint one of the other judges to act as chief election judge.

(3) The time of departure and reason for leaving shall be entered near the oath form subscribed by the election judge or on a form provided by the election administrator. The chief election judge shall sign the entry.

(4) The election administrator may appoint a judge to replace an excused judge.

(5) The election administrator may assign a judge or chief election judge to work less than a full polling day, but at least three judges, including a chief election judge, must be on duty during the time that the polls are open.

History: En. Sec. 62, Ch. 571, L. 1979; amd. Sec. 4, Ch. 232, L. 1993.

Cross-References

Voting of election judges by absentee ballot, 13-13-201.

CHAPTERS 5 THROUGH 9

RESERVED

CHAPTER 10

PRIMARY ELECTIONS AND NOMINATIONS

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13-10-101. Repealed.
13-10-102. Repealed.

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13-10-201. Declaration for nomination.
13-10-202. Filing fees.
13-10-203. Indigent candidates.
13-10-204. Write-in nominations.
13-10-205. Register of candidates.
13-10-206. Repealed.
13-10-207. Repealed.
13-10-208. Certificate of primary ballot — printing ballot.
13-10-209. Arrangement of ballots.
13-10-210. Repealed.
13-10-211. Declaration of intent for write-in candidates.

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13-10-301. Casting of ballot.
13-10-302. Write-in votes for previously nominated candidates.
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13-10-305. Independent forfeits place on ballot.
13-10-306 through 13-10-310 reserved.
13-10-311. Election judges' duties upon closing of polls.
13-10-312 through 13-10-321. Repealed.
13-10-322 through 13-10-324 reserved.
13-10-325. Withdrawal from nomination.
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13-10-501. Petition for nomination by independent candidates or political parties not eligible to participate in primary election.
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13-10-601. Parties eligible for primary election — petitions by minor parties.
13-10-602. Use of party name.
13-10-603. Repealed.
13-10-604. Nominations for minor parties.

Chapter Cross-References

Definitions applicable to this chapter, 13-1-101.

Times for holding primary elections, 13-1-107.

Criminal provisions relating to primary elections and nominations, Title 13, ch. 35.

Part 1

General Provisions (Repealed)

13-10-101. Repealed. Sec. 407, Ch. 571, L. 1979.
History: En. Sec. 58, Ch. 368, L. 1969; R.C.M. 1947, 23-3303.

13-10-102. Repealed. Sec. 11, Ch. 52, L. 1993.
History: En. Sec. 1, Ch. 2, Sp. L. January 1992.

Part 2

Preprimary Procedures

13-10-201. Declaration for nomination. (1) Each candidate in the primary election, except nonpartisan candidates filing under the provisions of chapter 14, shall send a declaration for nomination to the secretary of state or election administrator. Each candidate for governor shall send a joint declaration for nomination with a candidate for lieutenant governor.

(2) A declaration for nomination must be filed in the office of:

(a) the secretary of state for a congressional office, state or district office to be voted for in more than one county, member of the legislature, or judge of the district court;

(b) the election administrator for a county, municipal, precinct, or district office (other than a member of the legislature or judge of the district court) to be voted for in only one county.

(3) Each candidate shall sign the declaration and send with it the required filing fee or, in the case of an indigent candidate, send with it the documents required by 13-10-203. The declaration for nomination must be acknowledged by an officer empowered to acknowledge signatures if sent by mail or by the officer of the office at which the filing is made.

(4) The declaration, when filed, is conclusive evidence that the elector is a candidate for nomination by the elector's party.

(5) (a) The declaration for nomination must be in the form and contain the information prescribed by the secretary of state.

(b) A person seeking nomination to the legislature shall provide the secretary of state with a street address, legal description, or road designation to indicate the person's place of residence. If a candidate for the legislature changes residence, the candidate shall, within 15 days after the change, notify the secretary of state on a form prescribed by the secretary of state.

(c) The secretary of state and election administrator shall furnish declaration for nomination forms to individuals requesting them.

(6) Declarations for nomination must be filed no sooner than 135 days before the election in which the office first appears on the ballot and no later than 5 p.m., 75 days before the date of the primary election.

History: (1) thru (5)En. Sec. 59, Ch. 368, L. 1969; amd. Sec. 1, Ch. 28, L. 1973; amd. Sec. 1, Ch. 246, L. 1975; amd. Sec. 14, Ch. 365, L. 1977; Sec. 23-3304, R.C.M. 1947; (6)En. Sec. 60, Ch. 368, L. 1969; amd. Sec. 15, Ch. 365, L. 1977; Sec. 23-3305, R.C.M. 1947; R.C.M. 1947, 23-3304(1) thru (4), (8), 23-3305; amd. Sec. 63, Ch. 571, L. 1979; amd. Sec. 25, Ch. 250, L. 1985; amd. Sec. 3, Ch. 644, L. 1987; amd. Sec. 2, Ch. 74, L. 1993.

Cross-References

Joint filing of Governor and Lieutenant Governor, Art. VI, sec. 2, Mont. Const.

Forfeiture of judicial position on filing for nonjudicial elective office, Art. VII, sec. 10, Mont. Const.

General qualifications of persons seeking election to public office, 2-16-102.

Resignation of judge required prior to becoming candidate for another public office, 3-1-607, 3-1-608.

Election Administrator, 13-1-301.

Petition for nomination in presidential preference primary, 13-10-405.

Declaration of nomination in nonpartisan election, 13-14-112, 13-14-113.

Criminal provisions relating to declaration of nomination, 13-35-205 through 13-35-207, 13-35-221.

13-10-202. Filing fees. Filing fees are as follows:

(1) for offices having an annual salary of $2,500 or less and candidates for the legislature, $15;

(2) for county offices having an annual salary of more than $2,500, 0.5% of the total annual salary;

(3) for other offices having an annual salary of more than $2,500, 1% of the total annual salary;

(4) for offices in which compensation is paid in fees, $10;

(5) for officers of political parties, presidential electors, and officers who receive no salary or fees, no filing fee is required.

History: En. Sec. 59, Ch. 368, L. 1969; amd. Sec. 1, Ch. 28, L. 1973; amd. Sec. 1, Ch. 246, L. 1975; amd. Sec. 14, Ch. 365, L. 1977; R.C.M. 1947, 23-3304(5); amd. Sec. 64, Ch. 571, L. 1979.

Cross-References

Salaries of certain elected state officials, 2-16-405.

Salaries of certain county officers, 7-4-2503.

Filing fees not to be refunded if candidate withdraws, 13-10-325.

No fee for filing presidential preference primary petition, 13-10-405.

13-10-203. Indigent candidates. If an individual is unable to pay a filing fee, the filing officer shall accept the following documents in lieu of a filing fee:

(1) from a successful write-in candidate, a verified statement that he is unable to pay the filing fee;

(2) from a candidate for nomination, a verified statement that he is unable to pay the filing fee and a written petition for nomination as a candidate that meets the following requirements:

(a) contains the name of the office to be filled and the candidate's name and residence address;

(b) contains signatures numbering 5% or more of the total vote cast for the successful candidate for the same office at the last general election;

(c) the signatures are those of electors residing within the political subdivision of the state in which the candidate petitions for nomination; and

(d) the signatures have been certified by the appropriate election administrator by the procedure provided in 13-27-303 and 13-27-304.

History: En. Sec. 59, Ch. 368, L. 1969; amd. Sec. 1, Ch. 28, L. 1973; amd. Sec. 1, Ch. 246, L. 1975; amd. Sec. 14, Ch. 365, L. 1977; R.C.M. 1947, 23-3304(7); amd. Sec. 65, Ch. 571, L. 1979.

Cross-References

Equal protection of the laws, Art. II, sec. 4, Mont. Const.

13-10-204. Write-in nominations. An individual nominated by having his name written in on the primary ballot and desiring to accept the nomination may not have his name printed on the general election ballot unless he:

(1) files with the secretary of state or election administrator no later than 10 days after the official canvass, a written declaration indicating his acceptance of the nomination;

(2) pays the required filing fee or, if indigent, complies with 13-10-203;

(3) received at least 5% of the total votes cast for the successful candidate for the same office at the last general election; and

(4) complies with the provisions of 13-37-126.

History: En. Sec. 59, Ch. 368, L. 1969; amd. Sec. 1, Ch. 28, L. 1973; amd. Sec. 1, Ch. 246, L. 1975; amd. Sec. 14, Ch. 365, L. 1977; R.C.M. 1947, 23-3304(6); amd. Sec. 66, Ch. 571, L. 1979.

Cross-References

Write-in votes for previously nominated candidates, 13-10-302.

Acceptance of write-in nomination by independent candidate, 13-10-305.

Declaration or certification withheld for failure to file acceptance, 13-15-405, 13-15-507.

13-10-205. Register of candidates. The secretary of state and the election administrator may each keep a register of candidates who file with their respective offices. The register shall provide a complete record of the requisite information pertaining to all candidates in the primary and general election. Information on ballot issues may also be included in the register. The secretary of state may prepare and distribute a recommended format for the register.

History: En. Sec. 61, Ch. 368, L. 1969; R.C.M. 1947, 23-3306(1), (2); amd. Sec. 67, Ch. 571, L. 1979; amd. Sec. 1, Ch. 99, L. 1987.

13-10-206. Repealed. Sec. 407, Ch. 571, L. 1979.

History: En. Sec. 61, Ch. 368, L. 1969; R.C.M. 1947, 23-3306(3).

13-10-207. Repealed. Sec. 407, Ch. 571, L. 1979.

History: En. Sec. 61, Ch. 368, L. 1969; R.C.M. 1947, 23-3306(4).

13-10-208. Certificate of primary ballot — printing ballot. (1) Not more than 75 days and not less than 67 days before the date of the primary election, the secretary of state shall certify to the election administrators the names and designations of candidates, except as provided in 13-37-126, and any ballot issues as shown in the official records of the secretary of state's office in the manner provided in 13-10-209 and chapter 12, part 2, of this title.

(2) Not more than 67 days and not less than 62 days before the date of the primary election, the election administrator shall certify the names and designations of candidates, except as provided in 13-37-126, and any ballot issues as shown in the official record of the election administrator's office and have the official ballots printed in the manner provided in 13-10-209 and chapter 12, part 2, of this title.

(3) If a candidate for the legislature is no longer eligible under Article V, section 4, of the Montana constitution to seek the office for which the candidate has filed because the candidate has changed residence, the secretary of state shall notify the candidate that the candidate is required to withdraw as provided in 13-10-325.

History: En. Sec. 62, Ch. 368, L. 1969; R.C.M. 1947, 23-3307; amd. Sec. 68, Ch. 571, L. 1979; amd. Sec. 26, Ch. 250, L. 1985; amd. Sec. 3, Ch. 74, L. 1993.

Cross-References

Vacancy prior to primary election, 13-10-326.

Other election ballots, 13-12-201.

13-10-209. Arrangement of ballots. (1) (a) Ballots for a primary election shall be arranged and printed in the same manner and number as provided in chapter 12 for general election ballots, except there shall be separate ballots for each political party entitled to participate. The name of the political party shall be printed at the top of the separate ballot for that party and need not be printed opposite each candidate's name.

(b) Nonpartisan offices and ballot issues may be printed on separate ballots or may appear on the same ballot as partisan offices if:

(i) each section is clearly identified as separate; and

(ii) such nonpartisan offices and ballot issues appear on each party's ballot.

(2) It is not necessary to print a primary ballot for a political party which does not have candidates for more than half of the offices on the ballot in even-year elections if no more than one candidate files for nomination by that party for any of the offices on the ballot. The secretary of state shall certify that no primary election is necessary for that party if such is the case and shall certify or instruct the election administrator to certify the names of the candidates for that party for the general election ballot only.

(3) The separate ballots for each party shall be the same size and color. The stubs of each set of party ballots shall bear the same number. If printed as a separate ballot, the nonpartisan ballot shall be a different size or color than the party ballots, but the stubs shall be numbered in the same order as the party ballots.

(4) If a ballot issue is to be voted on at a primary election, it may be placed on the nonpartisan ballot or a separate ballot. A separate ballot may be a different size and color than the other ballots in the election, but the stubs shall be numbered in the same order.

(5) Each elector shall receive a set of party ballots and a nonpartisan and a ballot issue ballot if such ballots are printed.

History: En. Sec. 63, Ch. 368, L. 1969; amd. Sec. 2, Ch. 28, L. 1973; amd. Sec. 16, Ch. 365, L. 1977; R.C.M. 1947, 23-3308(1), (2), (7); amd. Sec. 69, Ch. 571, L. 1979; amd. Sec. 5, Ch. 298, L. 1987.

Cross-References

Duties of officials when election not held, 13-1-304.

Arrangement of ballots in other elections, 13-12-203.

13-10-210. Repealed. Sec. 407, Ch. 571, L. 1979.

History: En. Sec. 64, Ch. 368, L. 1969; R.C.M. 1947, 23-3309.

13-10-211. Declaration of intent for write-in candidates. (1) Except as provided in subsection (4), a person seeking to become a write-in candidate for an office in any election shall file a declaration of intent. The declaration of intent must be filed with the secretary of state or election administrator, depending on where a declaration of nomination for the desired office is required to be filed under 13-10-201, or with the school district clerk for a school district office. Except as provided in subsection (2), the declaration must be filed no later than 5 p.m. on the 15th day before the election and must contain:

(a) (i) the candidate's first and last names;

(ii) the candidate's initials, if any, used instead of a first name, or first and middle name, and the candidate's last name;

(iii) the candidate's nickname, if any, used instead of a first name, and the candidate's last name; and

(iv) a derivative or diminutive name, if any, used instead of a first name, and the candidate's last name;

(b) the candidate's mailing address;

(c) a statement declaring the candidate's intention to be a write-in candidate;

(d) the title of the office sought;

(e) the date of the election;

(f) the date of the declaration; and

(g) the candidate's signature.

(2) A declaration of intent may be filed after the deadline provided for in subsection (1) but no later than 5 p.m. on the day before the election if, less than 15 days before the election, a candidate for the office that the write-in candidate is seeking:

(a) dies;

(b) withdraws from the election; or

(c) is charged with a felony offense.

(3) The secretary of state shall notify each election administrator of the names of write-in candidates who have filed a declaration of intent with the secretary of state. Each election administrator and school district clerk shall notify the election judges in the county or district of the names of write-in candidates who have filed a declaration of intent.

(4) The requirements in subsection (1) do not apply to a write-in candidate seeking election:

(a) as a precinct officer in a primary election; or

(b) to an office for which no candidate has filed a declaration or petition for nomination or a declaration of intent.

History: En. Sec. 1, Ch. 391, L. 1989; amd. Sec. 1, Ch. 143, L. 1995.

Compiler's Comments

1995 Amendment: Chapter 143 in (1)(a)(i) substituted "candidate's first and last names" for "candidate's name"; inserted (1)(a)(ii) through (1)(a)(iv) relating to candidate's initials, nickname, or derivative or diminutive name; in (4)(a) substituted "precinct officer" for "precinct committeeman or committeewoman"; and made minor changes in style.

Cross-References
Counting of write-in votes, 13-15-202.

Part 3
Primary Election Procedure

13-10-301. Casting of ballot. (1) Unless otherwise provided by law, the conduct of the primary election, the voting procedure, the counting, tallying, and return of ballots and all election records and supplies, the canvass of votes, the certification and notification of nominees, recounts, procedures upon tie votes, and any other necessary election procedures shall be at the same times and in the same manner as provided for in the laws for the general election.

(2) At a primary election, the elector shall mark only one of the set of party ballots. After marking any other ballots received other than the party ballots, the elector shall fold the marked and unmarked ballots separately in a manner so that the marks cannot be seen, the official stamp is visible on each ballot, and all stubs can be detached by an election judge.

(3) The elector shall hand the marked and unmarked ballots separately to the election judge, identifying them as marked and unmarked. If the judge determines the ballots may be voted, he shall, in the presence of the elector:

(a) remove the stubs from all the ballots;

(b) deposit the unmarked ballot or ballots and all the stubs in the stub and unmarked ballot box;

(c) and deposit the marked ballots in the voted ballot box.

History: En. Sec. 63, Ch. 368, L. 1969; amd. Sec. 2, Ch. 28, L. 1973; amd. Sec. 16, Ch. 365, L. 1977; R.C.M. 1947, 23-3308(8), (9); amd. Sec. 70, Ch. 571, L. 1979.

Cross-References
General election procedures, Title 13, ch. 13.

13-10-302. Write-in votes for previously nominated candidates. If an elector writes the name of an individual upon a primary party ballot when the individual's name appears as a candidate for the same office on another party ballot, the vote shall count for the individual only as a candidate of the party upon whose ballot the individual's name is written and the votes cast on the separate party ballots may not be added together. Except as provided in 13-10-211(4), a write-in vote may be counted only if the vote identifies the individual by any of the designations filed pursuant to 13-10-211(1)(a)(i) through (1)(a)(iv).

History: En. Sec. 63, Ch. 368, L. 1969; amd. Sec. 2, Ch. 28, L. 1973; amd. Sec. 16, Ch. 365, L. 1977; R.C.M. 1947, 23-3308(3); amd. Sec. 71, Ch. 571, L. 1979; amd. Sec. 2, Ch. 143, L. 1995.

Compiler's Comments
1995 Amendment: Chapter 143 inserted second sentence requiring identification of individual by certain designations; and made minor changes in style.

13-10-303. Nominations by more than one party. If an individual is nominated by more than one party, he shall, not later than 10 days after the election, file written notification with the secretary of state or election administrator indicating the party under which his name is to appear upon the ballot for the general election. If he fails to notify the proper officers, his name shall appear under the party with whom his declaration for nomination was filed if a declaration was filed. If an individual did not file a declaration or acceptance of nomination and fails to notify the proper officers, his name shall be printed on the ballot without a party designation.

History: En. Sec. 63, Ch. 368, L. 1969; amd. Sec. 2, Ch. 28, L. 1973; amd. Sec. 16, Ch. 365, L. 1977; R.C.M. 1947, 23-3308(4); amd. Sec. 72, Ch. 571, L. 1979.

Cross-References

Printing of candidate's name and party designation, 13-12-203.

13-10-304. Repealed. Sec. 407, Ch. 571, L. 1979.

History: En. Sec. 63, Ch. 368, L. 1969; amd. Sec. 2, Ch. 28, L. 1973; amd. Sec. 16, Ch. 365, L. 1977; R.C.M. 1947, 23-3308(5).

13-10-305. Independent forfeits place on ballot. An individual who has filed as an independent candidate forfeits his place on the general election ballot as an independent candidate if he accepts a write-in nomination for an office as provided in 13-10-204.

History: En. Sec. 63, Ch. 368, L. 1969; amd. Sec. 2, Ch. 28, L. 1973; amd. Sec. 16, Ch. 365, L. 1977; R.C.M. 1947, 23-3308(6); amd. Sec. 73, Ch. 571, L. 1979.

13-10-306 through 13-10-310 reserved.

13-10-311. Election judges' duties upon closing of polls. (1) The election judges at the primary election shall separate the ballots for each political party and count each party's ballots separately.

(2) They shall reconcile the total number of party ballots and the separate total number of other ballots used at the election with the number of electors voting. Any discrepancies in the reconciliations shall be handled as provided in 13-15-201(3).

(3) Each party's candidates shall be listed separately in the tally books.

(4) The voted ballots of each party shall be bundled separately for return to the election administrator. The unvoted ballots deposited in the stub box shall be bundled with the stubs.

History: En. Sec. 65, Ch. 368, L. 1969; R.C.M. 1947, 23-3310; amd. Sec. 74, Ch. 571, L. 1979.

13-10-312 through 13-10-321. Repealed. Sec. 407, Ch. 571, L. 1979.

Compiler's Comments

Histories of Repealed Sections:

13-10-312. En. Sec. 66, Ch. 368, L. 1969; amd. Sec. 17, Ch. 365, L. 1977; R.C.M. 1947, 23-3311.

13-10-313. En. Sec. 67, Ch. 368, L. 1969; amd. Sec. 18, Ch. 365, L. 1977; R.C.M. 1947, 23-3312.

13-10-314. En. Sec. 68, Ch. 368, L. 1969; amd. Sec. 22, Ch. 315, L. 1974; amd. Sec. 19, Ch. 365, L. 1977; R.C.M. 1947, 23-3313(1).

13-10-315. En. Sec. 68, Ch. 368, L. 1969; amd. Sec. 22, Ch. 315, L. 1974; amd. Sec. 19, Ch. 365, L. 1977; R.C.M. 1947, 23-3313(6).

13-10-316. En. Sec. 68, Ch. 368, L. 1969; amd. Sec. 22, Ch. 315, L. 1974; amd. Sec. 19, Ch. 365, L. 1977; R.C.M. 1947, 23-3313(5).

13-10-317. En. Sec. 68, Ch. 368, L. 1969; amd. Sec. 22, Ch. 315, L. 1974; amd. Sec. 19, Ch. 365, L. 1977; R.C.M. 1947, 23-3313(3), (4).

13-10-318. (1)En. Sec. 68, Ch. 368, L. 1969; amd. Sec. 22, Ch. 315, L. 1974; amd. Sec. 19, Ch. 365, L. 1977; Sec. 23-3313, R.C.M. 1947; (2) thru (4)En. Sec. 69, Ch. 368, L. 1969; amd. Sec. 3, Ch. 28, L. 1973; amd. Sec. 22, Ch. 315, L. 1974; amd. Sec. 20 Ch. 365, L. 1977; Sec. 23-3314, R.C.M. 1947; R.C.M. 1947, 23-3313(2), 23-3314.

13-10-319. En. Sec. 63, Ch. 368, L. 1969; amd. Sec. 2, Ch. 28, L. 1973; amd. Sec. 16, Ch. 365, L. 1977; R.C.M. 1947, 23-3308(10).

13-10-320. En. Sec. 79, Ch. 368, L. 1969; amd. Sec. 24, Ch. 365, L. 1977; R.C.M. 1947, 23-3319.

13-10-321. En. Sec. 70, Ch. 368, L. 1969; amd. Sec. 22, Ch. 365, L. 1977; R.C.M. 1947, 23-3315.

13-10-322 through 13-10-324 reserved.

13-10-325. Withdrawal from nomination. (1) A candidate for nomination or candidate for election to an office may withdraw from the election by sending a statement of withdrawal to the officer with whom his declaration, petition, or acceptance of nomination was filed. The statement must contain all information necessary to identify the candidate and the office sought and the reason for withdrawal. It shall be sworn or affirmed before an officer empowered to administer oaths. A candidate may not withdraw later than 85 days before a general election or 75 days before a primary election.

(2) Filing fees paid by the candidate may not be refunded.

History: En. Sec. 82, Ch. 368, L. 1969; amd. Sec. 5, Ch. 254, L. 1971; amd. Sec. 4, Ch. 28, L. 1973; R.C.M. 1947, 23-3321(1); amd. Sec. 75, Ch. 571, L. 1979; amd. Sec. 27, Ch. 250, L. 1985; amd. Sec. 2, Ch. 229, L. 1989.

Cross-References

Officers who may administer oaths, 1-6-101.

Withdrawal based on promise or payment of consideration unlawful, 13-35-221.

13-10-326. Vacancy prior to primary election. (1) If a candidate for nomination for a partisan office dies or withdraws 75 days or more before the primary election, the affected political party may appoint someone to replace the candidate by the procedure provided in 13-10-327.

(2) If the death or withdrawal occurs less than 75 days before the primary, the affected political party shall appoint a candidate after the primary as provided in 13-10-327 if a candidate for that office for that party was not nominated at the primary election. This section does not allow a political party to appoint a candidate for an office if no candidate for nomination by that party filed for the office before the primary election.

History: En. Sec. 82, Ch. 368, L. 1969; amd. Sec. 5, Ch. 254, L. 1971; amd. Sec. 4, Ch. 28, L. 1973; R.C.M. 1947, 23-3321(2); amd. Sec. 76, Ch. 571, L. 1979; amd. Sec. 28, Ch. 250, L. 1985.

Cross-References

Certificate of primary ballot, 13-10-208.

Vacancy in governor or lieutenant governor candidacy, 13-10-328.

Certification of other election ballots, 13-12-201.

Labels to be prepared if replacement made after printing of ballot, 13-12-204.

Power of political party to appoint replacement, 13-38-101, 13-38-204.

13-10-327. Vacancy after primary and prior to general election. (1) If a party candidate dies or withdraws after the primary and before the general election, the affected political party shall appoint someone to replace the candidate in one of the following ways:

(a) For offices to be filled by the state at large, the state central committee shall make the appointment as provided by the rules of the party.

(b) For offices to be filled in districts including more than one county, a committee appointed by the county central committees of all counties in the district shall make the appointment. Procedures for the appointment of the committee and making the appointment shall be provided in party rules.

(c) For offices to be filled in counties, municipalities, or districts wholly within a county, the appointment shall be made under rules adopted by the county central committee.

(2) Appointments to fill vacancies must be made no later than 75 days before the election. A candidate may not officially withdraw 85 days or less before a general election. However, if a candidate for partisan office dies less than 85 days before the general election, the affected political party shall appoint a candidate within 5 days after being notified of the vacancy. The procedures provided in 13-12-204 shall be used to place the name of the appointee on the ballot if necessary.

(3) The appointing committee shall send a certificate to the officer with whom a declaration for nomination for the office would be filed, with the information required on a declaration for nomination and the name of the candidate for whom the appointee is to be substituted. The appointee shall send a signed and acknowledged acceptance of the appointment and the filing fee for the office.

(4) The officer receiving the certificate of appointment, accompanied by a statement of acceptance and the filing fee, shall certify the name of the appointee for the ballot.

History: En. Sec. 82, Ch. 368, L. 1969; amd. Sec. 5, Ch. 254, L. 1971; amd. Sec. 4, Ch. 28, L. 1973; R.C.M. 1947, 23-3321(3); amd. Sec. 77, Ch. 571, L. 1979; amd. Sec. 29, Ch. 250, L. 1985; amd. Sec. 3, Ch. 229, L. 1989.

Cross-References

Vacancy in executive branch office, Art. VI, sec. 6, 14, Mont. Const.; Title 2, ch. 16, part 5.

Vacancy in House or Senate, Title 5, ch. 2, part 4.

Vacancy in county office, 7-4-2106, 7-4-2206.

Declaration for nomination, 13-10-201.

Labels to be prepared if replacement made after printing of ballot, 13-12-204.

Power of political party to appoint replacement, 13-38-101, 13-38-204.

Vacancy in office of County Superintendent of Schools, 20-3-202.

Vacancy in office of School District Trustee, 20-3-309.

Vacancy in office of Community College District Trustee, 20-15-223.

Vacancy in office of Conservation District Supervisor, 76-15-312.

13-10-328. Vacancy in governor or lieutenant governor candidacy. The death or withdrawal of a candidate for governor or lieutenant governor does not affect the candidacy of the other joint candidate.

History: En. Sec. 82, Ch. 368, L. 1969; amd. Sec. 5, Ch. 254, L. 1971; amd. Sec. 4, Ch. 28, L. 1973; R.C.M. 1947, 23-3321(4); amd. Sec. 78, Ch. 571, L. 1979.

Cross-References

Joint filing of Governor and Lieutenant Governor, Art. VI, sec. 2, Mont. Const.

Death or disqualification of Governor-Elect, Art. VI, sec. 14, Mont. Const.

Part 4

Presidential Preference Primary

13-10-401. Date of presidential primary. In the years in which a president of the United States is to be elected, a presidential preference primary election will be held on the same day as the primary provided for in 13-1-107.

History: En. 23-3322 by Sec. 1, Ch. 162, L. 1974; R.C.M. 1947, 23-3322; amd. Sec. 79, Ch. 571, L. 1979; amd. Sec. 4, Ch. 644, L. 1987.

13-10-402. Ballot. The regular party primary ballots shall be used for the presidential preference primary election. The presidential section of the ballot shall be placed before any other section, national, state, or local.

History: En. 23-3323 by Sec. 2, Ch. 162, L. 1974; R.C.M. 1947, 23-3323; amd. Sec. 80, Ch. 571, L. 1979; amd. Sec. 5, Ch. 644, L. 1987.

Cross-References

Ballots for primary elections, 13-10-209.

13-10-403. Form of ballot. The presidential preference ballot shall list all candidates nominated in accordance with the provisions of this part and shall, in addition, include a presidential ballot position which shall be designated as "no preference" and a blank write-in space.

History: En. 23-3324 by Sec. 3, Ch. 162, L. 1974; R.C.M. 1947, 23-3324; amd. Sec. 81, Ch. 571, L. 1979; amd. Sec. 6, Ch. 644, L. 1987.

13-10-404. Nomination petition. Before a presidential candidate may qualify for placement on the ballot, the candidate must be nominated on petitions with the verified signatures of at least 2,000 qualified electors. The secretary of state is empowered to prescribe the form and content of the petition.

History: En. 23-3325 by Sec. 4, Ch. 162, L. 1974; R.C.M. 1947, 23-3325; amd. Sec. 10, Ch. 52, L. 1993.

Cross-References

Criminal provisions relating to signing petition, 13-35-207.

13-10-405. Submission and verification of petition. Petitions of nomination for the presidential preference primary election and the affidavits of circulation required by 13-27-302 must be presented to the election administrator of the county in which the signatures are gathered at least 1 week before the primary election filing deadline prescribed in 13-10-201(6). A filing fee is not required. The election administrator shall verify the signatures in the manner prescribed in 13-27-303 through 13-27-308 and must forward the petitions to the secretary of state.

History: En. 23-3326 by Sec. 5, Ch. 162, L. 1974; amd. Sec. 28, Ch. 342, L. 1977; R.C.M. 1947, 23-3326; amd. Sec. 82, Ch. 571, L. 1979; amd. Sec. 7, Ch. 644, L. 1987; amd. Sec. 4, Ch. 390, L. 1993.

13-10-406. Repealed. Sec. 11, Ch. 644, L. 1987.

History: En. 23-3327 by Sec. 6, Ch. 162, L. 1974; R.C.M. 1947, 23-3327.

13-10-407. Delegates to national presidential nominating conventions. The method of selection of delegates to national presidential nominating conventions is to be set by party rules. The use of the results of the presidential preference primary election by the political parties in their delegation selection systems is discretionary and is to be determined by party rules.

History: En. 23-3328 by Sec. 7, Ch. 162, L. 1974; R.C.M. 1947, 23-3328.

Part 5

Methods of Nomination Other Than by Primary Election

13-10-501. Petition for nomination by independent candidates or political parties not eligible to participate in primary election. (1) Except as provided in 13-10-504, nominations for public office by an independent candidate or a political party which does not meet the requirements of 13-10-601 may be made by a petition for nomination.

(2) The petition must contain the same information and the oath of the candidate required for a declaration for nomination.

(3) If a petition is filed by a political party, it must contain the party name and, in five words or less, the principle which such body represents.

(4) The form of the petition shall be prescribed by the secretary of state, and he shall furnish sample copies to the election administrators and on request to any individual.

(5) Each sheet of a petition must contain signatures of electors residing in only one county.

History: En. Sec. 78, Ch. 368, L. 1969; amd. Sec. 1, Ch. 59, L. 1971; amd. Sec. 1, Ch. 237, L. 1973; R.C.M. 1947, 23-3318(1), (2); amd. Sec. 83, Ch. 571, L. 1979.

Cross-References

Procedure for independent filing for vacancy in office of State Senator, 5-2-406.

Procedure for independent filing for vacancy on Board of County Commissioners, 7-4-2106.

Procedure for independent filing for vacancy in county office, 7-4-2206.

13-10-502. Signature requirements for petition. (1) The petition for nomination must be signed by electors residing within the state and district or political subdivision in which the officer or officers are to be elected. Each signature line must contain spaces for the signature, post-office address, and printed last name of the signer.

(2) The number of signatures must be 5% or more of the total vote cast for the successful candidate for the same office at the last general election.

(3) If the office sought is a new office or the boundaries of the district or political subdivision in which the election is to be held have changed since the last election for the office, the secretary of state shall determine the number of signatures required for a petition of nomination for that office.

History: En. Sec. 78, Ch. 368, L. 1969; amd. Sec. 1, Ch. 59, L. 1971; amd. Sec. 1, Ch. 237, L. 1973; R.C.M. 1947, 23-3318(3), (4); amd. Sec. 84, Ch. 571, L. 1979.

Cross-References

Vacancy in office of State Senator, 5-2-406.

Vacancy on Board of County Commissioners, 7-4-2106.

Vacancy in county office, 7-4-2206.

Criminal provisions relating to signing petition, 13-35-207.

13-10-503. Filing deadlines. (1) A petition for nomination and the affidavits of circulation required by 13-27-302, accompanied by the required filing fee, must be filed with the same officer with whom other nominations for the office sought are filed. Petitions must be submitted, at least 1 week before the deadline for filing, to the election administrator in the county where the signer resides for verification and certification by the procedures provided in 13-27-303 through 13-27-306. In the event there are insufficient signatures on the petition, additional signatures may be submitted before the deadline for filing.

(2) Except as provided in 13-10-504, each petition must be filed before the scheduled primary election or the filing deadline for the special or general election if a primary election is not scheduled.

History: En. Sec. 78, Ch. 368, L. 1969; amd. Sec. 1, Ch. 59, L. 1971; amd. Sec. 1, Ch. 237, L. 1973; R.C.M. 1947, 23-3318(5); amd. Sec. 85, Ch. 571, L. 1979; amd. Sec. 1, Ch. 437, L. 1983; amd. Sec. 8, Ch. 591, L. 1991; amd. Sec. 5, Ch. 390, L. 1993.

Cross-References

Officers for filing of petitions — filing deadline for primary elections, 13-10-201.

13-10-504. Independent or minor party candidates for president or vice president. (1) An individual who desires to run for president or vice president as an independent candidate or as a candidate of a party not qualified under 13-10-601 must file a petition for nomination with the secretary of state 90 days prior to the date of the general election.

(2) The petition and the affidavits of circulation required by 13-27-302 must first be submitted, at least 1 week before the deadline for filing, to the election administrator in the county where the signer resides for verification and certification by the procedures provided in 13-27-303 through 13-27-306.

(3) The petition must have the signatures of electors equal to 5% or more of the total votes cast for the successful candidate for governor at the last general election. The names of the candidates for the required number of presidential electors allowable to Montana must be certified to the secretary of state when the petition for nomination is filed.

(4) A qualified independent presidential candidate may amend the petition and designate or choose a named vice presidential candidate until the filing date provided in 13-25-101.

History: En. Sec. 78, Ch. 368, L. 1969; amd. Sec. 1, Ch. 59, L. 1971; amd. Sec. 1, Ch. 237, L. 1973; R.C.M. 1947, 23-3318(6); amd. Sec. 86, Ch. 571, L. 1979; amd. Sec. 6, Ch. 390, L. 1993.

Cross-References

Times for holding general elections, 13-1-104.

13-10-505. Applicability. The provisions of 13-10-501 through 13-10-504 shall not be used to fill vacancies or to nominate candidates in nonpartisan elections except for nominations to fill a vacancy as provided in 13-25-205.

History: En. Sec. 78, Ch. 368, L. 1969; amd. Sec. 1, Ch. 59, L. 1971; amd. Sec. 1, Ch. 237, L. 1973; R.C.M. 1947, 23-3318(7); amd. Sec. 87, Ch. 571, L. 1979; amd. Sec. 9, Ch. 3, L. 1985.

13-10-506. Repealed. Sec. 407, Ch. 571, L. 1979.

History: En. Sec. 1, Ch. 6, 2nd Ex. L. 1971; R.C.M. 1947, 23-3318.1.

13-10-507. Independent candidates — association with political parties not allowed. (1) A person seeking office as an independent candidate may not be associated with a political party for 1 year prior to the submission of his nomination petition.

(2) For the purposes of subsection (1), "associated with a political party" means having run for office as a partisan candidate or having held an office with a political party designation.

History: En. Sec. 9, Ch. 591, L. 1991.

Part 6

Nominations by Political Parties

13-10-601. Parties eligible for primary election — petitions by minor parties. (1) Each political party that had a candidate for a statewide office who received a total vote that was 5% or more of the total votes cast for the successful candidate for governor in either of the last two general elections shall nominate its candidates for public office, except for presidential electors, by a primary election as provided in this chapter.

(2) A political party that does not qualify to hold a primary election under subsection (1) may qualify to nominate its candidates by primary election by presenting a petition, in a form prescribed by the secretary of state, requesting the primary election and signed by a number of registered voters equal to 5% or more of the total votes cast for the successful candidate for governor at the last general election, which number must include the registered voters in more than one-third of the legislative districts equal to 5% or more of the total votes cast for the successful candidate for governor at the last general election in those districts. The petition and the affidavits of circulation required by 13-27-302 must be presented to the election administrator of the county in which the signatures were gathered to be verified under the procedures provided in 13-27-303 through 13-27-306. The election administrator shall forward the verified petition to the secretary of state at least 75 days before the date of the primary. The petition must be submitted to the election administrator at least 1 week before the deadline for submitting the verified petition to the secretary of state.

History: **En. Sec. 80, Ch. 368, L. 1969; R.C.M. 1947, 23-3320(1); amd. Sec. 88, Ch. 571, L. 1979; amd. Sec. 1, Ch. 368, L. 1981; amd. Sec. 30, Ch. 250, L. 1985; amd. Sec. 1, Ch. 196, L. 1991; amd. Sec. 7, Ch. 390, L. 1993.**

Cross-References

Nominations by parties unable to meet requirements of this section, Title 13, ch. 10, part 5.

Nomination of presidential electors, 13-25-101.

13-10-602. Use of party name. (1) Every political party and its regularly nominated candidates, members, and officers have the sole and exclusive right to the use of the party name. No candidate for office may use any word of the name of any other political party or organization other than that by which he is nominated.

(2) An independent or nonpartisan candidate shall not use any word of the name of any existing political party or organization in his candidacy.

History: **En. Sec. 80, Ch. 368, L. 1969; R.C.M. 1947, 23-3320(2), (3).**

13-10-603. Repealed. Sec. 407, Ch. 571, L. 1979.

History: **En. Sec. 80, Ch. 368, L. 1969; R.C.M. 1947, 23-3320(4).**

13-10-604. Nominations for minor parties. Any political party that does not qualify under the provisions of 13-10-601 may make nominations for public office as provided in 13-10-501 through 13-10-505.

History: **En. Sec. 80, Ch. 368, L. 1969; R.C.M. 1947, 23-3320(5); amd. Sec. 89, Ch. 571, L. 1979.**

CHAPTER 11

ELECTION PROCLAMATION

(Repealed. Sec. 407, Ch. 571, L. 1979)

Chapter Compiler's Comments

Histories of Repealed Sections:

13-11-101. En. Sec. 13, Ch. 368, L. 1969; amd. Sec. 7, Ch. 365, L. 1977; R.C.M. 1947, 23-2901.

13-11-102. En. Sec. 14, Ch. 368, L. 1969; R.C.M. 1947, 23-2902.

13-11-103. En. Sec. 15, Ch. 368, L. 1969; R.C.M. 1947, 23-2903.

CHAPTER 12

ELECTION SUPPLIES AND BALLOTS

Part 1 — Election Supplies

13-12-101. Copies of election laws to be furnished.
13-12-102. Items to be furnished by election administrators.
13-12-103. Repealed.
13-12-104. Repealed.
13-12-105. Repealed.

Part 2 — Ballots

13-12-201. Secretary of state to certify ballot.
13-12-202. Ballot form and uniformity.
13-12-203. Printing of candidate's name and party designation on ballot.
13-12-204. Labels to be printed and distributed where vacancy has been filled.
13-12-205. Arrangement of names — rotation on ballot.
13-12-206. Repealed.
13-12-207. Order of placement.
13-12-208. Provision for write-in votes.
13-12-209. Paper ballots — stub size — content.
13-12-210. Number of ballots to be provided for each precinct.
13-12-211. Repealed.
13-12-212. Election administrator to provide printed ballots — other ballots prohibited.
13-12-213. Repealed.
13-12-214. Sample ballots.

Chapter Cross-References

Definitions applicable to this chapter, 13-1-101.

Disposition of ballots and other election materials, 13-1-303.

Criminal provisions relating to election supplies and ballots, Title 13, ch. 35.

Part 1

Election Supplies

13-12-101. Copies of election laws to be furnished. The secretary of state shall furnish to each election administrator copies of this title sufficient to provide each election precinct in the administrator's county with two copies and to provide a small extra supply for the administrator.

History: (1)En. Sec. 16, Ch. 368, L. 1969; Sec. 23-2904, R.C.M. 1947; (2)En. 23-4794 by Sec. 19, Ch. 480, L. 1975; amd. Sec. 66, Ch. 365, L. 1977; Sec. 23-4794, R.C.M. 1947; R.C.M. 1947, 23-2904, 23-4794; amd. Sec. 90, Ch. 571, L. 1979; amd. Sec. 1, Ch. 121, L. 1983; amd. Sec. 1, Ch. 113, L. 1993.

13-12-102. Items to be furnished by election administrators. The election administrators shall deliver to each polling place or to the chief election judge for a polling place all supplies necessary to conduct the election at that polling place. If the blank ballots for the polling place are delivered before noon of the day before the election, the election administrator shall retain sufficient ballots to supply electors requesting absentee ballots. The election administrator shall write in the pollbook for that polling place, after the numbers of the ballots retained, "reserved for absentee ballots".

History: Ap.p. Sec. 84, Ch. 368, L. 1969; Sec. 23-3501, R.C.M. 1947; Ap.p. Sec. 4280, Pol. C. 1895; re-en. Sec. 2939, Rev. C. 1907; re-en. Sec. 4515, R.C.M. 1921; Cal. Pol. C. Sec. 4064; re-en. Sec. 4515, R.C.M. 1935; Sec. 16-1156, R.C.M. 1947; R.C.M. 1947, 16-1156, 23-3501; amd. Sec. 91, Ch. 571, L. 1979.

13-12-103. Repealed. Sec. 407, Ch. 571, L. 1979.

History: En. Sec. 85, Ch. 368, L. 1969; R.C.M. 1947, 23-3502.

13-12-104. Repealed. Sec. 407, Ch. 571, L. 1979.

History: En. Sec. 86, Ch. 368, L. 1969; R.C.M. 1947, 23-3503.

13-12-105. Repealed. Sec. 407, Ch. 571, L. 1979.

History: En. Sec. 87, Ch. 368, L. 1969; R.C.M. 1947, 23-3504.

Part 2
Ballots

Part Cross-References

Election on question of creating new county — form of ballot, 7-2-2218.

13-12-201. Secretary of state to certify ballot. (1) Seventy-five days or more before an election, except as provided in 13-10-208, the secretary of state shall certify to the election administrators the name and party or other designation of each candidate entitled to appear on the ballot and the ballot issues as shown in the official records of the secretary of state's office, which must include the notification specified in 13-37-126.

(2) The election administrator shall certify the name and party or other designation of each candidate entitled to appear on the ballot and the ballot issues as shown in the official records of the election administrator's office, which must include the notification specified in 13-37-126, and shall have the official ballots printed.

(3) If a candidate for the legislature is no longer eligible under Article V, section 4, of the Montana constitution to seek the office for which the candidate has filed because the candidate has changed residence, the secretary of state shall notify the candidate that the candidate is required to withdraw as provided in 13-10-325.

History: En. Sec. 100, Ch. 368, L. 1969; R.C.M. 1947, 23-3517(3); amd. Sec. 92, Ch. 571, L. 1979; amd. Sec. 31, Ch. 250, L. 1985; amd. Sec. 4, Ch. 74, L. 1993.

13-12-202. Ballot form and uniformity. (1) The secretary of state shall prescribe the ballot form for all types of ballots used in this state.

(2) The names of all candidates printed upon the ballots shall be in type of the same size and character.

(3) When the stubs are detached, it must be impossible to distinguish any one of the ballots from another ballot for the same office or issue.

(4) The ballots must contain the name of every candidate whose nomination is certified under law for an office and no other names, except that the names of candidates for president and vice president of the United States shall appear on the ballot as provided in 13-25-101(2).

History: En. Sec. 91, Ch. 368, L. 1969; R.C.M. 1947, 23-3508(4); amd. Sec. 93, Ch. 571, L. 1979.

Cross-References

Nonpartisan candidates to appear, 13-14-117.

13-12-203. Printing of candidate's name and party designation on ballot. (1) Except as provided in 13-10-209 and 13-10-303, in partisan elections, candidates' names shall be printed under the title of the office sought, with the name of the party, in not more than three words, or "Independent" printed opposite the name.

(2) In nonpartisan elections, the candidates' names shall be printed under the title of the office sought, with no description or designation printed with the name unless partisan and nonpartisan offices appear on the same ballot. In such a case, the names of nonpartisan candidates shall have printed with them the words "Nominated without party designation".

History: En. Sec. 92, Ch. 368, L. 1969; amd. Sec. 2, Ch. 254, L. 1971; R.C.M. 1947, 23-3509; amd. Sec. 94, Ch. 571, L. 1979.

13-12-204. Labels to be printed and distributed where vacancy has been filled. (1) If an appointment has been made to replace a candidate as provided in 13-10-326 or 13-10-327 after the ballots have been printed but before the election, the election administrator shall order labels printed containing the name of the new nominee and any other information required to go on the ballot.

(2) The election administrator shall affix the labels in the proper place on each ballot or deliver the labels to the chief election judges to be affixed in the proper place on each ballot before it is given to the elector.

History: En. Sec. 93, Ch. 368, L. 1969; R.C.M. 1947, 23-3510; amd. Sec. 95, Ch. 571, L. 1979.

13-12-205. Arrangement of names — rotation on ballot. (1) The candidates' names shall be arranged alphabetically on the ballot according to surnames under the title of the respective offices.

(2) (a) Except as provided in subsection (3), if two or more individuals are candidates for nomination or election to the same office, the election administrator shall divide the ballot forms into sets equal in number to the greatest number of candidates for any office. The candidates for nomination to an office by each political party shall be considered separately in determining the number of sets necessary for a primary election.

(b) The election administrator shall begin with a form arranged alphabetically and rotate so that each candidate's name will be at the top of the list for each office on substantially an equal number of ballots. If it is not numerically possible to place each candidate's name at the top of the list, the names shall be rotated in groups so that each candidate's name is as near the top of the list as possible on substantially an equal number of ballots.

(c) If the county contains more than one legislative district, the election administrator may rotate each candidate's name so that it will be at or near the top of the list for each office on substantially an equal number of ballots in each house district.

(d) For purposes of rotation, the offices of president and vice president and of governor and lieutenant governor shall be considered as a group.

(e) No more than one of the sets may be used in printing the ballot for use in any one precinct, and all ballots furnished for use in any precinct must be identical.

(3) In a precinct where voting devices are used, the election administrator need not rotate candidates' names as provided in subsection (2) on paper ballots required under 13-17-305; however, if more than 5% of the electors voting in the precinct in the last preceding general election voted using paper ballots, the election administrator shall rotate candidates' names on the paper ballots. If the candidates' names are not rotated, the election administrator shall determine by lot the arrangement of the names on the paper ballot.

History: En. Sec. 94, Ch. 368, L. 1969; R.C.M. 1947, 23-3511; amd. Sec. 96, Ch. 571, L. 1979; amd. Sec. 1, Ch. 576, L. 1985.

Cross-References

Arrangement of ballot in primary election, 13-10-209.

Arrangement of names in conservation district election, 76-15-303.

13-12-206. Repealed. Sec. 407, Ch. 571, L. 1979.

History: En. Sec. 95, Ch. 368, L. 1969; amd. Sec. 28, Ch. 365, L. 1977; R.C.M. 1947, 23-3512.

13-12-207. Order of placement. (1) The order on the ballot for state and national offices shall be as follows:

(a) If the election is in a year in which a president of the United States is to be elected, in spaces separated from the balance of the party tickets by a heavy black line shall be the names and spaces for voting for candidates for president and vice president. The names of candidates for president and vice president for each political party shall be grouped together.

(b) United States senator;
(c) United States representative;
(d) Governor and lieutenant governor;
(e) Secretary of state;
(f) Attorney general;
(g) State auditor;
(h) Public service commissioners;
(i) State superintendent of public instruction;
(j) Clerk of the supreme court;
(k) Chief justice of the supreme court;
(l) Justices of the supreme court;
(m) District court judges;
(n) State senators;
(o) Members of the house of representatives.

(2) The following order of placement shall be observed for county offices:
(a) clerk of the district court;
(b) county commissioner;
(c) county clerk and recorder;
(d) sheriff;
(e) coroner;
(f) county attorney;
(g) county superintendent of schools;
(h) county auditor;
(i) public administrator;

(j) county assessor;
(k) county treasurer;
(l) surveyor;
(m) justice of the peace.

(3) The secretary of state shall designate the order for placement on the ballot of any offices not on the above lists, except that the election administrator shall designate the order of placement for municipal, charter, consolidated, or confederated local government offices and district offices when the district is part of only one county.

(4) Constitutional amendments shall be placed before statewide referendum and initiative measures. Ballot issues for a county, municipality, school district, or other political subdivision shall follow statewide measures in the order designated by the election administrator.

(5) If any offices are not to be elected they shall not be listed, but the order of the offices to be filled shall be maintained.

(6) If there is a short-term and a long-term election for the same office, the long-term office shall precede the short-term.

History: Ap. p. Sec. 96, Ch. 368, L. 1969; amd. Sec. 5, Ch. 28, L. 1973; amd. Sec. 22, Ch. 315, L. 1974; amd. Sec. 29, Ch. 365, L. 1977; amd. Sec. 3, Ch. 468, L. 1977; Sec. 23-3513, R.C.M. 1947; Ap. p. Sec. 100, Ch. 368, L. 1969; Sec. 23-3517, R.C.M. 1947; R.C.M. 1947, 23-3513, 23-3517(1), (2); amd. Sec. 97, Ch. 571, L. 1979.

13-12-208. Provision for write-in votes. Below the list of names of candidates for each office there must be as many blank spaces for write-in voting as there are officers to be elected.

History: En. Sec. 97, Ch. 368, L. 1969; R.C.M. 1947, 23-3514; amd. Sec. 98, Ch. 571, L. 1979.

13-12-209. Paper ballots — stub size — content. (1) Paper ballots shall be printed on the same sheet with a stub, separated by perforation.

(2) The stub shall extend the entire width of the ballot and have instructions printed on it.

(3) Upon the face of the stub shall be printed the following:

This ballot should be marked with an “x” in the square before the name of each individual or candidate for whom the elector intends to vote. The elector may write in or affix a preprinted label in the blank spaces or over any other name, the name of an individual for whom he wishes to vote and vote by marking an “x” in the square before the name. If a ballot contains a constitutional amendment or other issue to be submitted to a vote of the people, it is voted on by marking an “x” in the square before the amendment or issue.

(4) On the stub shall be printed or stamped the consecutive number of the ballot, beginning with number 1 and increasing in regular numerical order to the total number of ballots required for the precinct.

History: En. Sec. 98, Ch. 368, L. 1969; amd. Sec. 1, Ch. 414, L. 1975; amd. Sec. 30, Ch. 365, L. 1977; R.C.M. 1947, 23-3515; amd. Sec. 99, Ch. 571, L. 1979.

13-12-210. Number of ballots to be provided for each precinct. (1) The election administrator shall provide each election precinct with sufficient ballots for the electors registered, plus an extra supply to cover spoiled ballots.

(2) The election administrator shall keep a record in his office showing the exact number of ballots that are delivered to the election judges of each precinct.

History: En. Sec. 99, Ch. 368, L. 1969; R.C.M. 1947, 23-3516; amd. Sec. 100, Ch. 571, L. 1979.

13-12-211. Repealed. Sec. 407, Ch. 571, L. 1979.

History: En. Sec. 90, Ch. 368, L. 1969; R.C.M. 1947, 23-3507.

13-12-212. Election administrator to provide printed ballots — other ballots prohibited. Except as otherwise provided in the election laws of this state:

(1) the election administrator shall provide printed ballots for every election. He shall have printed on the ballot the names of all candidates for all offices to be filled at the election and the title and other wording required by law for all ballot issues.

(2) ballots other than those printed by the election administrator may not be cast or counted in any election.

History: En. Sec. 89, Ch. 368, L. 1969; amd. Sec. 27, Ch. 365, L. 1977; R.C.M. 1947, 23-3506; amd. Sec. 101, Ch. 571, L. 1979.

Cross-References

Ballot form for ballot issues, 13-27-501.

13-12-213. Repealed. Sec. 407, Ch. 571, L. 1979.

History: En. Sec. 91, Ch. 368, L. 1969; R.C.M. 1947, 23-3508(1) thru (3).

13-12-214. Sample ballots. The election administrator may have sample ballots printed in a number sufficient to answer requests from the political parties, schools, and electors. Sample ballots must be duplicates of the official ballots but must be clearly distinguishable from official ballots and may not have perforated stubs or be numbered.

History: En. Sec. 102, Ch. 571, L. 1979.

Cross-References

Conduct of election on question of creating new county, 7-2-2219.

CHAPTER 13

ELECTION PROCEDURE

Part 1 — Procedure at Polling Place

13-13-101. Duties — proclamation prior to opening and closing polls.
13-13-102 through 13-13-110. Repealed.
13-13-111. Provision and use of election booths, voting machines, or voting devices.
13-13-112. Display of instructions for electors.
13-13-113. Warning notice to be posted.
13-13-114. Marking precinct register book before elector votes.
13-13-115. Pollbooks.
13-13-116. Ballots to be stamped — one ballot to elector.
13-13-117. Method of voting.
13-13-118. Taking ballot to disabled elector.
13-13-119. Aid to disabled elector.
13-13-120. Poll watchers — announcement of elector's name.
13-13-121. Additional poll watchers.
13-13-122. Preventing obstructions.

Part 2 — Procedure for Electors Absent From the Polling Place

13-13-201. Voting by absentee ballot — qualifications.
13-13-202. Repealed.
13-13-203. Absentee ballots where voting machines or devices used.
13-13-204. Authority to vote in person — printing error or ballot destroyed — failure to receive ballot — effect of absentee elector's death.
13-13-205. When ballots to be available.
13-13-206 through 13-13-210 reserved.
13-13-211. Application of absentee, chronically ill, handicapped, elderly, or physically incapacitated elector for ballot — special absentee ballot application.
13-13-212. Application for absentee ballot.
13-13-213. Transmission of application to election administrator — delivery of ballot.
13-13-214. Mailing ballot to elector.
13-13-215 through 13-13-220 reserved.
13-13-221. Marking and affirming ballot.
13-13-222. Voting before election day by prospective absentee, chronically ill, or physically incapacitated elector.
13-13-223 and 13-13-224 reserved.
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13-13-226. Manner of selection.
13-13-227. Oath of board members.
13-13-228. Compensation.
13-13-229. Voting performed before the special absentee election board.
13-13-230. Authorization to increase county mill levy.
13-13-231. Disposition of marked ballot upon receipt by election administrator.
13-13-232. Delivery of ballots to election judges — ballots to be rejected.
13-13-233. Issue and record of absentee ballots — certificate.
13-13-234. Duty of election judges — pollbook.
13-13-235. Renumbered 13-13-241 by Code Commissioner, 1979.
13-13-236. Renumbered 13-13-243 by Code Commissioner, 1979.
13-13-237. Repealed.
13-13-238. Repealed.
13-13-239. Renumbered 13-13-244 by Code Commissioner, 1979.
13-13-240. Repealed.
13-13-241. Examination of absentee ballot envelopes and affirmations while polls open — deposit of absentee and unvoted ballots.
13-13-242. Repealed.
13-13-243. Rejected absentee ballots.
13-13-244. Opening of envelopes after deposit.
13-13-245 through 13-13-270 reserved.
13-13-271. Federal write-in absentee ballot — qualifications.
13-13-272. Procedure for voting federal write-in absentee ballot.
13-13-273. Counting of federal write-in absentee ballots.
13-13-274 and 13-13-275 reserved.
13-13-276. Legislative findings and purpose.
13-13-277. Registration and voting by facsimile authorized.
13-13-278. Adoption of rules — acceptance of funds.
13-13-279. Advisory council assistance — report to legislature.

Part 3 — Challenges

13-13-301. Challenges on election day.
13-13-302. Repealed.
13-13-303. Repealed.
13-13-304. Duties of election judges in response to challenges.
13-13-305. Election judges' powers concerning challenges.
13-13-306. Proceedings pursuant to challenges — oaths.
13-13-307. Determination of challenges.
13-13-308. Repealed.
13-13-309. Proceedings after determination of challenge.

13-13-310. List of challenges to be kept.
13-13-311. Vote by challenged elector.

Chapter Cross-References

Suffrage and elections, Art. IV, Mont. Const.

Definitions applicable to this chapter, 13-1-101.

Criminal provisions relating to election procedures, Title 13, ch. 35.

School elections, Title 20, ch. 20.

Part 1

Procedure at Polling Place

Part Cross-References

Accessibility of polling places, Title 13, ch. 3, part 2.

13-13-101. Duties — proclamation prior to opening and closing polls. (1) The election judges shall meet at their assigned polling places at the time set by the election administrator. The judges shall take and subscribe the official oath prescribed by the constitution. They may administer the oath to each other. The judges shall check all supplies and complete preparations for voting before the time set for opening the polls, under the direction of the chief election judge.

(2) Before the polls are opened or closed, that fact must be proclaimed at the place of election.

History: En. Sec. 102, Ch. 368, L. 1969; R.C.M. 1947, 23-3602; amd. Sec. 103, Ch. 571, L. 1979.

Cross-References

Oath of office, Art. III, sec. 3, Mont. Const.

Oath of judges, 13-4-105.

13-13-102 through 13-13-110. Repealed. Sec. 407, Ch. 571, L. 1979.

Compiler's Comments

Histories of Repealed Sections:

13-13-102. En. Sec. 101, Ch. 368, L. 1969; R.C.M. 1947, 23-3601.

13-13-103. En. Sec. 103, Ch. 368, L. 1969; R.C.M. 1947, 23-3603.

13-13-104. En. Sec. 110, Ch. 368, L. 1969; amd. Sec. 3, Ch. 254, L. 1971; amd. Sec. 32, Ch. 365, L. 1977; R.C.M. 1947, 23-3610.

13-13-105. En. Sec. 104, Ch. 368, L. 1969; R.C.M. 1947, 23-3604.

13-13-106. En. Sec. 106, Ch. 368, L .1969; amd. Sec. 31, Ch. 365, L. 1977; R.C.M. 1947, 23-3606.

13-13-107. (1)En. Sec. 107, Ch. 368, L. 1969; amd. Sec. 42, Ch. 334, L. 1977; Sec. 23-3607, R.C.M. 1947; (2)En. Sec. 108, Ch. 368, L. 1969; Sec. 23-3608, R.C.M. 1947; R.C.M. 1947, 23-3607, 23-3608.

13-13-108. En. Sec. 109, Ch. 368, L. 1969; R.C.M. 1947, 23-3609.

13-13-109. En. Sec. 118, Ch. 368, L. 1969; R.C.M. 1947, 23-3618.

13-13-110. En. Sec. 105, Ch. 368, L. 1969; amd. Sec. 41, Ch. 334, L. 1977; R.C.M. 1947, 23-3605.

13-13-111. Provision and use of election booths, voting machines, or voting devices. (1) The election administrator shall provide a sufficient number of booths, voting machines, or voting devices to allow voting to proceed with as little delay as possible. Booths, voting machines, or voting devices must be arranged in a manner that will not permit any other individual to see how the elector votes or has voted, and the election judges may not permit any individual to remain in any position that would allow him to see how the elector votes or has voted.

(2) No more than one individual may occupy a booth at one time except when assistance is furnished an elector as provided by law. No individual may occupy a booth or use a voting machine or device longer than is reasonably necessary to prepare his ballot, after which the election judges may eject him.

History: En. Sec. 104, Ch. 571, L. 1979.

Cross-References

Secret ballot requirement, Art. IV, sec. 1, Mont. Const.

Provisions relating to disabled electors, 13-13-118, 13-13-119.

Criminal provisions relating to ballot secrecy, 13-35-201, 13-35-202.

13-13-112. Display of instructions for electors. (1) Instructions for electors on how to prepare their ballots or use machines or devices must be posted in each compartment provided for the preparation of ballots and elsewhere in the polling place.

(2) The instructions must be in easily read type, 18 point or larger, and explain how to:

(a) obtain ballots for voting;

(b) prepare ballots for deposit in the ballot box; and

(c) obtain a new ballot in place of one spoiled by accident.

(3) If the instructions for use of the machine or device are printed on the machine or device or are part of a ballot package given each elector, separate instructions need not be posted in the compartment.

(4) Official ballots for the precinct, clearly marked "sample" across the face, shall be posted in each booth or compartment and in conspicuous places about the polling place in all precincts where paper ballots are used. Diagrams showing the arrangement of the ballot for that precinct shall be posted in conspicuous places about the polling place in all precincts using machines or devices.

History: En. Sec. 105, Ch. 571, L. 1979; amd. Sec. 13, Ch. 200, L. 1987.

Cross-References

Criminal provisions relating to injury to election materials, 13-35-206.

13-13-113. Warning notice to be posted. Warning notices shall be posted in conspicuous places in the polling place. Each notice shall be headed "WARNING" in large letters and shall state:

"The sections of law printed below list specific conduct or actions which may cause an elector to be subject to criminal prosecution. This is not intended to be a complete printing of all laws pertaining to election violations."

Below this statement shall be printed the following sections: 13-35-201; 13-35-202; 13-35-206; 13-35-211; 13-35-214; 13-35-217; and 13-35-218.

History: En. Sec. 106, Ch. 571, L. 1979.

13-13-114. Marking precinct register book before elector votes. (1) Before an elector is permitted to receive a ballot or vote, he shall sign his name on the place designated in the precinct register. Before signing the register, the elector shall state his name and current address. If the name or address is not as listed in the precinct register, the elector must complete a transfer form or new registration form to correct the information. The election judges shall write "transfer form" or "registration form" beside the name of any elector submitting a form. No elector may sign the precinct register unless his name and address are the same as shown in the register or the proper corrections have been made.

(2) If the elector is not able to sign his name to the precinct register, a fingerprint or other identifying mark may be used.

(3) If the elector fails or refuses to sign his name or, if unable to write, fails to provide a fingerprint or other identifying mark, he may not vote.

History: En. Sec. 107, Ch. 571, L. 1979; amd. Sec. 10, Ch. 591, L. 1991.

13-13-115. Pollbooks. (1) In precincts using paper ballots, the name of each elector who votes shall be entered in a pollbook and numbered in the order voting so that the number corresponds with the number on the stubs of the ballots given the elector or an election judge may use a numbering device to stamp the number of the ballot stub next to the name of the elector in a precinct register/pollbook.

(2) In precincts where machines or devices are used, a pollbook need be used only for paper ballots. The election administrator shall provide such precincts with some method of recording the number of individuals voting.

History: En. Sec. 108, Ch. 571, L. 1979; amd. Sec. 11, Ch. 591, L. 1991.

13-13-116. Ballots to be stamped — one ballot to elector. (1) Before delivering ballots to an elector, the election judges shall stamp the words "official ballot" on the ballot. A part of the stamp may not appear on the stub. They shall also stamp the name of the county, the number of the precinct, and any other information the election administrator believes necessary to distinguish the ballots from those used in any other election.

(2) Each elector shall receive from the election judges one of each type of ballot being used at the election.

History: En. Sec. 109, Ch. 571, L. 1979; amd. Sec. 6, Ch. 298, L. 1987; amd. Sec. 8, Ch. 390, L. 1993.

Cross-References

Stamping of absentee ballot, 13-13-214.

13-13-117. Method of voting. (1) On receipt of his ballot, the elector must immediately retire to one of the booths and prepare his ballot.

(2) He shall prepare his ballot by marking an "x" in the square before the name of the individual or individuals for whom he intends to vote.

(3) If the ballot contains a ballot issue, he shall mark an "x" in the applicable square indicating his vote either for or against the issue.

(4) The elector may write the name of an individual for whom he wishes to vote in the blank space or affix a preprinted label in the blank space and may vote for that individual by marking an "x" before the name. When the ballot is marked in this manner, it must be counted the same as though the name were printed upon the ballot and marked by the elector, except as provided in 13-15-202.

(5) An elector voting a ballot that will be counted by an optical scan ballot tabulating device shall mark his ballot in the manner prescribed on his ballot. However, his ballot must not be invalidated if he marks the voting positions with an "x".

(6) After preparing his ballot, the elector must fold it so the face of the ballot will be concealed and the official stamp may be seen and hand it to the election judges.

(7) The judge receiving the ballots shall remove the stubs in sight of the elector and deposit each ballot in the ballot box and each stub in a box for detached stubs. The judge must place the ballots in the ballot box immediately without opening or examining them.

(8) No individual except an election judge may put a ballot, any paper resembling a ballot, or anything other than a ballot in a ballot box.

(9) Any elector who spoils his ballot may, on returning the spoiled ballot, receive another in place of it.

History: En. Sec. 110, Ch. 571, L. 1979; amd. Sec. 7, Ch. 298, L. 1987; amd. Sec. 2, Ch. 391, L. 1989.

Cross-References

Declaration of intent for write-in candidates, 13-10-211.

13-13-118. Taking ballot to disabled elector. (1) The chief election judge may appoint two election judges who represent different political parties to take a ballot to an elector able to come to the premises where a polling place is located but unable to enter the polling place because of a disability. The elector may request assistance in marking his ballot as provided in 13-13-119.

(2) The judges shall have the elector sign an oath form stating he is entitled to vote and shall write in the precinct register by the elector's name "voted on the premises by oath" and sign their names.

(3) When the ballot or ballots are marked and folded, the judges shall immediately take them into the polling place and give them to the judge at the ballot box. The judge receiving the voted ballots shall distinctly announce he has "a ballot offered by ...... (name), an elector physically unable to enter the room. Does anyone object to the reception of the ballot?" If no objection is heard, the judge shall remove the stub and place the ballot and stub in the proper boxes. Any challenge to the elector's right to vote shall be resolved as provided in Title 13, chapter 13, part 3.

History: En. Sec. 111, Ch. 571, L. 1979.

13-13-119. Aid to disabled elector. (1) The election judges or an individual chosen by the disabled elector as specified in subsection (4) may aid an elector who, because of physical disability or inability to read or write, needs assistance in marking his ballot.

(2) The election judges shall require the declaration of disability by the elector to be under oath and may administer the oath.

(3) The elector may be assisted by two judges who represent different parties. The judges must certify on the precinct register opposite the disabled elector's name that the ballot was marked with their assistance. The judges may not reveal information regarding the ballot.

(4) Instead of assistance as provided in subsection (3), the elector may request the assistance of any individual whom he designates to the judges to aid him in the marking of his ballot, and the individual chosen shall sign his name on the precinct register beside the name of the elector assisted. The individual chosen may not be the elector's employer, an agent of his employer, or an officer or agent of the elector's union.

(5) No elector other than the one who requires assistance may divulge to anyone within the polling place the name of any candidate for whom he intends

to vote or may ask or receive the assistance of any individual within the polling place in the preparation of his ballot.

History: **En. Sec. 112, Ch. 571, L. 1979; amd. Sec. 8, Ch. 298, L. 1987.**

13-13-120. Poll watchers — announcement of elector's name. The election judges shall permit one poll watcher from each political party to station himself close to the poll lists in a location that does not interfere with the election procedures. At the time when each elector signs his name, one of the election judges shall pronounce the name loud enough to be heard by the poll watchers. A poll watcher who does not understand the pronunciation has the right to request that the judge repeat the name. Poll watchers shall also be permitted to observe all of the vote counting procedures of the judges after the closing of the polls and all entries of the results of the elections.

History: **En. Sec. 113, Ch. 571, L. 1979.**

13-13-121. Additional poll watchers. A candidate, a group of candidates, or any group having an interest in the election may request the election administrator to allow additional poll watchers at any precinct. The election administrator shall grant such requests if the number of poll watchers at the polling place will not interfere with the election procedures.

History: **En. Sec. 114, Ch. 571, L. 1979.**

13-13-122. Preventing obstructions. An election officer, sheriff, constable, or other peace officer may clear the passageway, prevent any obstruction, or arrest any individual obstructing the passageway to a polling place.

History: **En. Sec. 115, Ch. 571, L. 1979.**

Cross-References

Electors — privilege from arrest, Art. IV, sec. 6, Mont. Const.

Persons exempt from arrest, 46-6-102.

Part 2

Procedure for Electors Absent From the Polling Place

Part Cross-References

Registration and voting by facsimile authorized, 13-13-277.

13-13-201. Voting by absentee ballot — qualifications. A qualified registered elector is entitled to vote by absentee ballot, as provided in this part, if the elector:

(1) expects to be absent from the county or precinct and unable to vote in person at the time of holding the election;

(2) is physically incapacitated and unable to go to the polls on election day;

(3) suffers from chronic illness or general ill health; or

(4) is prevented from voting at the polls as a result of an illness or health emergency occurring between 5 p.m. on the Friday preceding the election and noon on election day. Such health emergency must arise from unforeseen circumstances that require the elector to seek health care or medical assistance.

History: **En. Sec. 119, Ch. 368, L. 1969; R.C.M. 1947, 23-3701; amd. Sec. 116, Ch. 571, L. 1979; amd. Sec. 1, Ch. 239, L. 1985.**

13-13-202. Repealed. Sec. 407, Ch. 571, L. 1979.

History: **En. Sec. 132, Ch. 368, L. 1969; R.C.M. 1947, 23-3714.**

13-13-203. Absentee ballots where voting machines or devices used. (1) In precincts where voting machines or devices are used, the election administrator shall if necessary print and provide:

(a) ballots in official form for qualified electors who may vote absentee as provided in 13-13-201; and

(b) ballot boxes required for precincts in which printed ballots are used.

(2) Absentee ballots received in those precincts shall be handled as provided in this chapter.

History: **En. Sec. 134, Ch. 368, L. 1969; R.C.M. 1947, 23-3716(1), (2); amd. Sec. 117, Ch. 571, L. 1979; amd. Sec. 2, Ch. 239, L. 1985.**

13-13-204. Authority to vote in person — printing error or ballot destroyed — failure to receive ballot — effect of absentee elector's death. (1) If an elector has voted by absentee ballot but the absentee ballot contains printing errors or omissions, the elector may vote in person in any manner at his polling place.

(2) If an elector does not receive his absentee ballot or if the absentee ballot was destroyed, he may appear at his polling place on election day and vote in person after signing an affidavit, in the form prescribed by the secretary of state, swearing that his ballot has not been received or was destroyed. Before the ballot is given to the elector, the election judge shall write upon the back of the ballot the number of the ballot. The ballot may be cast out if it appears to the court to have been wrongfully or illegally voted.

(3) If an elector votes by absentee ballot and dies between the time of balloting and election day, his ballot does not count.

History: **En. Sec. 127, Ch. 571, L. 1979; amd. Sec. 2, Ch. 120, L. 1983; amd. Sec. 9, Ch. 298, L. 1987.**

13-13-205. When ballots to be available. (1) The election administrator shall ensure that ballots are printed and available for absentee voting at least 45 days prior to an election for those elections held in compliance with 13-1-104(1) and 13-1-107(1).

(2) For elections held in compliance with 13-1-104(2) and (3) and 13-1-107(2), the election administrator shall ensure that ballots are printed and available for absentee voting at least 20 days prior to an election.

History: **En. Sec. 2, Ch. 586, L. 1983; amd. Sec. 32, Ch. 250, L. 1985; amd. Sec. 10, Ch. 298, L. 1987.**

Cross-References

Voting by prospective absentee or physically incapacitated elector, 13-13-222.

13-13-206 through 13-13-210 reserved.

13-13-211. Application of absentee, chronically ill, handicapped, elderly, or physically incapacitated elector for ballot — special absentee ballot application. (1) Except as provided in 13-2-214, during a period beginning 75 days before the day of election and ending at noon on the day before the election, an individual may apply to the election administrator for an absentee ballot if he is:

(a) an elector expecting to be absent from the county in which his voting precinct is situated;

(b) an elector who is chronically ill or in general ill health;

(c) a handicapped or elderly elector who has been assigned to an inaccessible polling place; or

(d) an elector who will be unable to go to the polls because of physical incapacity.

(2) A qualified elector who is prevented from voting at the polls as a result of an illness or health emergency occurring between 5 p.m. on the Friday preceding the election and noon on election day may request to vote by absentee ballot. The election administrator shall honor any such request received up to and including noon on election day. The election administrator is not required to comply with a request by an elector who is absent from the county.

History: En. Sec. 121, Ch. 368, L. 1969; amd. Sec. 1, Ch. 145, L. 1975; R.C.M. 1947, 23-3703; amd. Sec. 118, Ch. 571, L. 1979; amd. Sec. 3, Ch. 239, L. 1985; amd. Sec. 4, Ch. 396, L. 1985; amd. Sec. 14, Ch. 200, L. 1987.

Cross-References

Accessibility of polling places, Title 13, ch. 3, part 2.

13-13-212. Application for absentee ballot. (1) Application for absentee ballots shall be made by a written request signed by the applicant and addressed to or transmitted by facsimile to the election administrator of the applicant's county of residence.

(2) Application for an absentee ballot may be made by any elector in the United States service by the federal post card application or by any written request signed by the applicant and addressed to or transmitted by facsimile to the election administrator of the applicant's county of residence.

(3) If an elector requests an absentee ballot because of a sudden illness or health emergency, the application for an absentee ballot may be made by written request signed by the elector at the time the ballot is delivered in person by the special absentee election board provided for in 13-13-225. Such elector may request by telephone, facsimile transmission, or other means to have a ballot and application personally delivered to him by the special absentee election board at his place of confinement, hospitalization, or residence within the county. Such a request may be made no later than noon on election day.

History: En. Sec. 122, Ch. 368, L. 1969; amd. Sec. 1, Ch. 287, L. 1975; R.C.M. 1947, 23-3704; amd. Sec. 119, Ch. 571, L. 1979; amd. Sec. 4, Ch. 239, L. 1985; amd. Sec. 12, Ch. 591, L. 1991.

13-13-213. Transmission of application to election administrator — delivery of ballot. (1) Except as provided in subsection (2), the elector shall forward the application by mail or deliver it in person to the election administrator. The election administrator shall compare the signature on the application with the applicant's signature on the registration card. If convinced the individual making the application is the same as the one whose name appears on the registration card, the election administrator shall deliver the ballot to the elector in person or as otherwise provided in 13-13-214.

(2) In lieu of the requirement provided in subsection (1), an elector who requests an absentee ballot pursuant to 13-13-212(3) may return the application to the special absentee election board. Upon receipt of the application, the special absentee election board shall examine the signatures on the application and a copy of the voting registration card to be provided by the election administrator. If the special absentee election board believes that the applicant

is the same person as the one whose name appears on the registration card, the special absentee election board shall provide a ballot to the elector.

History: En. Sec. 123, Ch. 368, L. 1969; R.C.M. 1947, 23-3705; amd. Sec. 120, Ch. 571, L. 1979; amd. Sec. 5, Ch. 239, L. 1985; amd. Sec. 1, Ch. 203, L. 1995.

Compiler's Comments

1995 Amendment: Chapter 203 at end of (1) inserted language providing that an absentee ballot may be picked up in person or as provided in 13-13-214; and made minor changes in style.

13-13-214. Mailing ballot to elector. (1) (a) Except as provided in 13-13-213 and in subsection (1)(b) of this section, as soon as the official ballots are printed, the election administrator shall send by mail, postage prepaid, to each elector from whom the election administrator has received a valid application whatever official ballots are necessary. Ballots must be sent immediately to electors submitting valid requests after the official ballots are printed.

(b) The election administrator may deliver a ballot in person to an individual other than the elector if:

(i) the elector has designated the individual, either by a signed letter or by making the designation on the application form in a manner prescribed by the secretary of state;

(ii) the individual taking delivery of the ballot on behalf of the elector verifies, by signature, receipt of the ballot;

(iii) the election administrator believes that the individual receiving the ballot is the designated person; and

(iv) the designated person has not previously picked up ballots for four other electors.

(2) The election administrator shall enclose with the ballots a self-addressed envelope for the return of the ballots. An affirmation in the form prescribed by the secretary of state must be printed on the back of the envelope.

(3) The election administrator shall stamp the ballots provided to an absentee elector as provided in 13-13-116.

(4) Both the envelope in which the ballot is mailed to an elector in the United States service and the return envelope must have printed across the face the information and graphics and be of the color prescribed by the secretary of state consistent with the regulations established by the federal election commission, the U.S. postal service, or other federal agency.

(5) If the ballots sent to the elector are for a primary election, the election administrator shall enclose an extra envelope marked "For Unvoted Party Ballot(s)". This envelope may not be numbered or marked in any way so that it can be identified as being used by any one elector.

(6) Instructions for voting must be enclosed with the ballots. Instructions for primary elections must include use of the envelope for unvoted ballots. The instructions must include information concerning the type or types of writing instruments that may be used to mark the absentee ballot. The election administrator shall include a voter information pamphlet with the instructions if:

(a) a statewide ballot issue appears on the ballot mailed to the elector;

(b) the elector is out of the state or will be out of the state at the time of the election; and

(c) the elector requests a voter information pamphlet.

(7) The return envelope must be self-addressed to the election administrator.

History: En. Sec. 124, Ch. 368, L. 1969; amd. Sec. 1, Ch. 246, L. 1971; amd. Sec. 2, Ch. 287, L. 1975; R.C.M. 1947, 23-3706; amd. Sec. 121, Ch. 571, L. 1979; amd. Sec. 1, Ch. 110, L. 1983; amd. Sec. 1, Ch. 119, L. 1995; amd. Sec. 2, Ch. 203, L. 1995.

Compiler's Comments

1995 Amendments — Composite Section: Chapter 119 at end of (6) inserted requirement that voter information pamphlet be included with certain absentee ballots; and made minor changes in style.

Chapter 203 at beginning of (1)(a) inserted exception clause; inserted (1)(b) providing criteria for allowing elector to designate person to pick up absentee ballot for elector and limiting to four the number of absentee ballots that may be picked up by another person; and made minor changes in style.

Style changes in the chapters were slightly different. In each case, the codifier has chosen the most appropriate.

13-13-215 through 13-13-220 reserved.

13-13-221. Marking and affirming ballot. (1) After the elector marks his ballots, he shall fold them so that the vote is concealed and so that the official stamp is visible. The stubs shall be left attached and the ballots should be folded so that the stubs can be detached without revealing the vote.

(2) The elector shall place the ballots in the envelope addressed to the election administrator and seal it securely. If the ballots are for a primary election, the party ballot or ballots not voted shall be placed in the envelope marked for that purpose and enclosed in the outer envelope with the voted ballots.

(3) The elector shall complete and sign the affirmation on the envelope.

(4) The elector shall mail the envelope, postage prepaid, or deliver it to the election administrator or the special absentee election board.

History: En. Sec. 125, Ch. 368, L. 1969; amd. Sec. 3, Ch. 287, L. 1975; R.C.M. 1947, 23-3707; amd. Sec. 122, Ch. 571, L. 1979; amd. Sec. 6, Ch. 239, L. 1985.

13-13-222. Voting before election day by prospective absentee, chronically ill, or physically incapacitated elector. (1) As soon as the official ballots are available, the election administrator shall permit an elector who is present in his county and who has reason to believe that he will be absent from the county, ill, or physically incapacitated on election day to vote before election day before the election administrator.

(2) The provisions of this chapter apply to such voting.

(3) If the ballot is marked before the election administrator, he shall deal with it in the same manner as if it had come by mail.

History: En. Sec. 130, Ch. 368, L. 1969; amd. Sec. 4, Ch. 287, L. 1975; R.C.M. 1947, 23-3712; amd. Sec. 123, Ch. 571, L. 1979; amd. Sec. 1, Ch. 586, L. 1983; amd. Sec. 7, Ch. 239, L. 1985.

Cross-References

When ballots to be available, 13-13-205.

Disposition of absentee ballot, 13-13-231.

13-13-223 and 13-13-224 reserved.

13-13-225. Special absentee election boards — members — appointment. (1) The election administrator shall designate and appoint a number of special absentee election boards as needed to serve in various places to deliver ballots to electors who are entitled to vote by absentee ballot under 13-13-201(4).

(2) In a partisan election, each special absentee election board shall consist of two members, one from each of the two political parties receiving the highest

votes in the state during the last preceding general election. Board members must reside in the county in which they serve.

(3) No member of a special absentee election board may be a candidate or a spouse, ascendant, descendant, brother, or sister of a candidate or of a candidate's spouse or the spouse of any one of these if the candidate's name appears on a ballot in the county.

History: En. Sec. 10, Ch. 239, L. 1985.

13-13-226. Manner of selection. The election administrator shall make appointments to the special absentee election board from lists of qualified electors prepared in substantially the same manner as provided in 13-4-102. If the list is insufficient to make all the appointments required, the election administrator may appoint any qualified registered elector from the county. The election administrator may refuse for cause to appoint or may for cause remove a member of a special absentee election board.

History: En. Sec. 11, Ch. 239, L. 1985.

13-13-227. Oath of board members. Before assuming any of his responsibilities under this part, each member of a special absentee election board must take and subscribe the official oath in the same manner as prescribed for an election judge in 13-4-105.

History: En. Sec. 12, Ch. 239, L. 1985.

13-13-228. Compensation. (1) Each member of a special absentee election board is entitled to compensation for the number of hours worked.

(2) Each member of a special absentee election board is entitled to full reimbursement for actual travel expenses incurred while delivering ballots on election day.

(3) The election administrator shall pay each member the same compensation and certify amounts due in the same manner as for an election judge as provided for in 13-4-106(1).

History: En. Sec. 13, Ch. 239, L. 1985.

13-13-229. Voting performed before the special absentee election board. (1) As provided in 13-13-201(4), a qualified elector who becomes ill or is prevented from voting at the polls because of a health emergency may vote by absentee ballot. Pursuant to 13-13-212(3), such elector may request that a special absentee election board personally deliver a ballot to him.

(2) The manner and procedure of voting by use of an absentee ballot under this section must be the same as provided in 13-13-221, except the elector must hand the marked ballot in the sealed envelope to the special absentee election board, and the board must deliver the sealed envelope to the election administrator or to the election judges of the precinct in which the elector is registered.

(3) An absentee ballot cast by a qualified elector pursuant to this section may not be rejected by the election administrator if the ballot was in the possession of the board before the time designated for the closing of the polls.

(4) An elector who needs assistance in marking his ballot because of physical incapacity or inability to read or write may receive assistance from the special absentee election board appointed to personally deliver the ballot. Any such assistance given an elector pursuant to this section must be provided in substantially the same manner as required in 13-13-119.

History: En. Sec. 14, Ch. 239, L. 1985.

13-13-230. Authorization to increase county mill levy. Each county may levy an amount not exceeding 1 mill as may be necessary to finance the additional cost of administering a special absentee election board program pursuant to 13-13-225 through 13-13-229. Such mill levy may not be included as part of any existing mill levy or special mill levy assessed by the county. The amount of any mill levy adopted under this section must be reasonably related to the actual cost of providing services as required by 13-13-225 through 13-13-229.

History: En. Sec. 15, Ch. 239, L. 1985.

13-13-231. Disposition of marked ballot upon receipt by election administrator. (1) Upon receipt of the voted absentee ballot, the election administrator shall immediately attach the elector's application to the envelope and mark the precinct number for delivery.

(2) The election administrator shall safely keep the absentee ballots in his office until delivered by him.

History: En. Sec. 126, Ch. 368, L. 1969; amd. Sec. 36, Ch. 365, L. 1977; R.C.M. 1947, 23-3708; amd. Sec. 124, Ch. 571, L. 1979.

13-13-232. Delivery of ballots to election judges — ballots to be rejected. (1) If the absentee ballot is received prior to delivery of the official ballots to the election judges, the election administrator shall deliver the envelope to the judges at the same time the ballots are delivered.

(2) If absentee ballots are received after the ballots are delivered to the election judges but prior to the close of the polls, the election administrator shall immediately deliver the envelopes to the judges.

(3) If the election administrator receives an absentee ballot for which an application or request was not received as required by 13-13-211, or if an absentee ballot is received by the election administrator after the close of the polls and was not issued to an elector pursuant to 13-13-201(4), the election administrator shall endorse upon the elector's envelope the date and exact time of receipt and the words "to be rejected". Absentee ballots so endorsed shall be retained by the election administrator and placed with the proper records when they are returned to him.

History: En. Sec. 127, Ch. 368, L. 1969; amd. Sec. 4, Ch. 254, L. 1971; R.C.M. 1947, 23-3709(1) thru (3); amd. Sec. 125, Ch. 571, L. 1979; amd. Sec. 8, Ch. 239, L. 1985.

13-13-233. Issue and record of absentee ballots — certificate. (1) The absentee ballots delivered shall be regular official ballots beginning with ballot number 1 and following consecutively according to the number of applications for absentee ballots.

(2) The election administrator shall keep a record of all absentee ballots delivered, as well as of ballots marked before him.

(3) The election administrator shall deliver to the chief election judges to whom the ballots are delivered a certificate stating:

(a) the number of absentee ballots delivered as well as those marked before him;

(b) the number of ballots retained for late absentee voting; and

(c) the names of the electors to whom such ballots were delivered or by whom they have been marked if marked before him.

(4) The chief election judge shall post in a conspicuous location at the polling place a list of the names of electors appearing on the certificate required under subsection (3).

History: En. Sec. 128, Ch. 368, L. 1969; R.C.M. 1947, 23-3710; amd. Sec. 126, Ch. 571, L. 1979; amd. Sec. 3, Ch. 120, L. 1983.

13-13-234. Duty of election judges — pollbook. (1) The election judges, at the opening of the polls, shall note on the pollbook opposite the numbers corresponding to the number of absentee ballots issued the fact that the ballots were issued and reserve the numbers for the absent, chronically ill, or physically incapacitated electors, as well as those electors prevented from voting at the polls because of a sudden illness or health emergency.

(2) The election judges shall insert only the name of the elector entitled to each particular number according to the certificate of the election administrator and the number of his ballot.

History: En. Sec. 129, Ch. 368, L. 1969; amd. Sec. 37, Ch. 365, L. 1977; R.C.M. 1947, 23-3711; amd. Sec. 128, Ch. 571, L. 1979; amd. Sec. 9, Ch. 239, L. 1985.

13-13-235. Renumbered 13-13-241 by Code Commissioner, 1979.

13-13-236. Renumbered 13-13-243 by Code Commissioner, 1979.

13-13-237. Repealed. Sec. 407, Ch. 571, L. 1979.

History: En. Sec. 131, Ch. 368, L. 1969; amd. Sec. 5, Ch. 287, L. 1975; amd. Sec. 38, Ch. 365, L. 1977; R.C.M. 1947, 23-3713(10).

13-13-238. Repealed. Sec. 407, Ch. 571, L. 1979.

History: En. Sec. 131, Ch. 368, L. 1969; amd. Sec. 5, Ch. 287, L. 1975; amd. Sec. 38, Ch. 365, L. 1977; R.C.M. 1947, 23-3713(11).

13-13-239. Renumbered 13-13-244 by Code Commissioner, 1979.

13-13-240. Repealed. Sec. 407, Ch. 571, L. 1979.

History: En. Sec. 127, Ch. 368, L. 1969; amd. Sec. 4, Ch. 254, L. 1971; R.C.M. 1947, 23-3709(4).

13-13-241. Examination of absentee ballot envelopes and affirmations while polls open — deposit of absentee and unvoted ballots. (1) While the polls are open, the election judges may compare the signature of the elector on the absentee ballot request and affirmation. If they find that the signatures correspond, that the affirmation is sufficient, and that the absentee elector is qualified, they may open the absentee ballot envelope.

(2) If the absentee ballot does not meet the requirements specified in subsection (1), it must be rejected. The election judges, without opening the absentee ballot envelope, shall mark across it the reason for rejection and a majority of the judges shall sign their initials. Unopened rejected absentee ballot envelopes must be handled in the same manner as provided for rejected ballots in 13-13-243.

(3) After opening the absentee envelope and without unfolding the ballots or permitting them to be examined, the election judges shall ascertain whether the stubs are attached or enclosed and whether the numbers correspond to the numbers in the certificate of the election administrator. If so, they shall detach the stubs and deposit the stubs and ballots in the proper ballot boxes. In a primary election, the unvoted ballots must be deposited in the unvoted ballot box without being removed from their enclosure envelope.

(4) If upon opening the absentee ballot envelope it is found that the number does not correspond to the number on the certificate of the election administrator, the ballot must be rejected. The reason for rejection must be marked on the back of the ballot or ballots, and the statement must be initialed by a majority of the election judges.

History: En. Sec. 131, Ch. 368, L. 1969; amd. Sec. 5, Ch. 287, L. 1975; amd. Sec. 38, Ch. 365, L. 1977; R.C.M. 1947, 23-3713(1) thru (6); amd. Sec. 129, Ch. 571, L. 1979; Sec. 13-13-235, MCA 1979; redes. 13-13-241 by Code Commissioner, 1979; amd. Sec. 11, Ch. 298, L. 1987.

13-13-242. Repealed. Sec. 20, Ch. 298, L. 1987.

History: En. Sec. 130, Ch. 571, L. 1979.

13-13-243. Rejected absentee ballots. (1) The rejected ballots, the applications, and all envelopes shall be enclosed in an envelope and sealed, and the judges shall write on the envelope "rejected ballot(s) of absentee elector" (writing in the elector's name).

(2) The unopened absentee ballot envelope of an elector who has voted in person as provided in 13-13-204 must be marked "voted in person" and initialed by a majority of the election judges.

(3) The unopened absentee ballot envelope of an elector who dies before election day shall be marked "died before election day" and initialed by a majority of the election judges if they are notified of the death on election day. The election administrator shall make and sign the notation if notice of the death is received before delivery of the absentee ballot to the polling place.

(4) All rejected ballots shall be placed in the sealed package in which the voted ballots are required to be placed and may not be opened without a court order.

History: En. Sec. 131, Ch. 368, L. 1969; amd. Sec. 5, Ch. 287, L. 1975; amd. Sec. 38, Ch. 365, L. 1977; R.C.M. 1947, 23-3713(7) thru (9); amd. Sec. 131, Ch. 571, L. 1979; Sec. 13-13-236, MCA 1979; redes. 13-13-243 by Code Commissioner, 1979; amd. Sec. 4, Ch. 120, L. 1983.

13-13-244. Opening of envelopes after deposit. If an envelope containing an absentee ballot has been deposited unopened in the ballot box and the envelope has not been marked rejected, the envelope shall be opened without a court order and the ballot cast.

History: En. Sec. 133, Ch. 368, L. 1969; amd. Sec. 39, Ch. 365, L. 1977; R.C.M. 1947, 23-3715; Sec. 13-16-239, MCA 1979; redes. 13-13-244 by Code Commissioner.

13-13-245 through 13-13-270 reserved.

13-13-271. Federal write-in absentee ballot — qualifications. (1) An elector qualified by 13-2-211 who fears his regular absentee ballot might not arrive in time to vote and return to the election administrator of the county of his residence and registration may also vote a federal write-in absentee ballot.

(2) The federal write-in absentee ballot is available to military personnel and civilians overseas through the same source that provides federal post card application forms and is only valid for federal elections.

(3) Except as provided in 13-2-212(3), the elector shall apply for a regular absentee ballot as provided in 13-13-212(2) not less than 30 days before the general election.

History: En. Sec. 1, Ch. 43, L. 1987; amd. Sec. 3, Ch. 302, L. 1991.

13-13-272. Procedure for voting federal write-in absentee ballot. (1) An elector voting a federal write-in ballot may designate a candidate by writing in the name of the candidate or by writing in the name of the political party. A vote may not be voided for reasons of misspellings, abbreviations, or other minor variations of the candidate's name.

(2) If an elector receives his regular absentee ballot after he has voted and mailed a federal write-in absentee ballot, he may vote and return the regular absentee ballot.

History: En. Sec. 1, Ch. 43, L. 1987.

13-13-273. Counting of federal write-in absentee ballots. (1) A federal write-in absentee ballot must be counted if:

(a) the condition in 13-13-271(3) has been met;

(b) the regular absentee ballot has not been received by 8 p.m. election day;

(c) it has not been submitted from any location within the continental United States, Alaska, Hawaii, or Guam; and

(d) it is received by 8 p.m. election day.

(2) Federal write-in absentee ballots received before the close of the polls election day will not be counted until the polls have closed.

History: En. Sec. 1, Ch. 43, L. 1987.

13-13-274 and 13-13-275 reserved.

13-13-276. Legislative findings and purpose. The legislature finds that the increased use of facsimile transmissions has encouraged the possibility of absentee voter registration and the sending and receiving of absentee ballots by facsimile. The legislature also finds that while federal law encourages but does not require the use of facsimile transmissions in federal elections, there are sufficient reliability in facsimile technology and sufficient evidence that absentee facsimile voting would be of benefit to electors in the United States service, to provide for absentee registration and voting by facsimile. It is the purpose of 13-13-276 through 13-13-279 to allow for absentee voter registration and voting by facsimile, while recognizing that state and local election officials have the responsibility to maintain the accuracy, integrity, and secrecy of the election process and the individual election ballot. It is the purpose of the legislature to allow facsimile voting for electors in the United States service but to continue to ensure that voting security is maintained for the ultimate purpose of preventing election fraud and maintaining the validity of the election process.

History: En. Sec. 1, Ch. 111, L. 1991.

13-13-277. Registration and voting by facsimile authorized. Notwithstanding other provisions of this title, each election administrator may, in any primary election, general election, and special election, take the following acts by facsimile transmission, if facsimile facilities are available, in place of the use of the public mails when requested by an elector or, for the purposes of registration under subsection (1), an individual intending to become an elector, in the United States service, as defined in 13-2-211:

(1) register an individual to vote;

(2) give notice of registration;

(3) receive requests for an absentee ballot;

(4) transmit absentee ballots to electors; and

(5) receive absentee ballots from electors.

History: En. Sec. 2(1), Ch. 111, L. 1991.

13-13-278. Adoption of rules — acceptance of funds. (1) The secretary of state shall adopt reasonable rules under the rulemaking provisions of the Montana Administrative Procedure Act to implement 13-13-277. The rules are binding upon election administrators. The rules must require compliance with the same time requirements or deadlines as for registration and voting by absentee ballot by use of the public mails, except that the rules may provide for different times for the acceptance of facsimile ballots after the closing of the polls. The rules must maintain the accuracy, integrity, and secrecy of the ballot process and must allow registration and voting by facsimile through use of a private corporation or other private entity for transmission of facsimile messages only if the secretary of state finds that the use is essential to the purposes of 13-13-276 through 13-13-279.

(2) The secretary of state may apply for and receive a grant of funds from any agency or office of the United States government or from any other public or private source and may use the money for the purpose of implementing 13-13-276 through 13-13-279.

History: En. Sec. 2(2), (3), Ch. 111, L. 1991.

Cross-References

Adoption and publication of rules, Title 2, ch. 4, part 3.

Registration by mail, 13-2-203.

Close of registration, 13-2-301.

13-13-279. Advisory council assistance — report to legislature. (1) The secretary of state shall adopt the rules required by 13-13-278(1) with the assistance of the secretary's election administrators advisory council, and the advisory council shall assist and advise the secretary in the implementation of 13-13-276 through 13-13-279.

(2) The secretary of state shall by January 1, 1995, prepare a written report to the legislature concerning the implementation of 13-13-276 through 13-13-279 and the activities of the advisory council in implementing 13-13-276 through 13-13-279. The report must:

(a) include copies of rules adopted by the secretary of state in accordance with 13-13-277 and 13-13-278;

(b) contain a detailed summary of the experience of the secretary of state and local election administrators in implementing 13-13-276 through 13-13-279; and

(c) include any recommendations for changes to the applicable laws.

History: En. Sec. 3, Ch. 111, L. 1991.

Part 3
Challenges

13-13-301. Challenges on election day. (1) An elector's right to vote may be challenged on election day by any registered elector by orally stating to the election judges the grounds of the challenge.

(2) An individual offering to vote may be orally challenged by any elector of the county upon the following grounds:

(a) that he is not the individual whose name appears on the register;

(b) that he does not reside at the residence listed unless the elector is voting under the provisions of 13-2-512 and 13-2-514;

(c) that he is of unsound mind, as determined by a court;

(d) that he has voted before in that election; or

(e) that he has been convicted of a felony and is serving a sentence in a penal institution.

History: **(1)En. Sec. 34, Ch. 368, L. 1969; amd. Sec. 11, Ch. 365, L. 1977; Sec. 23-3015, R.C.M. 1947; (2)En. Sec. 111, Ch. 368, L. 1969; amd. Sec. 33, Ch. 365, L. 1977; Sec. 23-3611, R.C.M. 1947; R.C.M. 1947, 23-3015(3), 23-3611; amd. Sec. 132, Ch. 571, L. 1979.**

Cross-References

Qualified elector, Art. IV, sec. 2, Mont. Const.

Challenges prior to election, 13-2-404.

Challenges in school elections, 20-20-303.

Definition of felony, 45-2-101.

Effect of conviction, 46-18-801.

Developmentally disabled individuals, Title 53, ch. 20.

Mentally ill individuals, Title 53, ch. 21.

Persons under disability, guardianship, and conservatorship, Title 72, ch. 5.

13-13-302. Repealed. Sec. 407, Ch. 571, L. 1979.

History: **En. Sec. 27, Init. Act, Nov. 1912; re-en. Sec. 10792, R.C.M. 1921; re-en. Sec. 10792, R.C.M. 1935; Sec. 94-1446, R.C.M. 1947; redes. 23-4746 by Sec. 29, Ch. 513, L. 1973; amd. Sec. 45, Ch. 334, L. 1977; R.C.M. 1947, 23-4746.**

13-13-303. Repealed. Sec. 407, Ch. 571, L. 1979.

History: **En. Sec. 37, Ch. 368, L. 1969; amd. Sec. 12, Ch. 365, L. 1977; R.C.M. 1947, 23-3018(2).**

13-13-304. Duties of election judges in response to challenges. The election judges shall:

(1) test the qualifications of the elector challenged under oath if he applies to vote;

(2) compare the answers of the elector with the entries in the precinct register; and

(3) not permit him to vote if the elector:

(a) is found to be disqualified because the answers given do not correspond to the entry in the precinct register or any transfer form or registration form submitted by the elector;

(b) is disqualified for any cause under the law;

(c) refuses to be sworn and to answer questions touching the matter of residence; or

(d) refuses to take an oath or affirmation as to his qualifications.

History: **Ap. p. Sec. 34, Ch. 368, L. 1969; amd. Sec. 11, Ch. 365, L. 1977; Sec. 23-3015, R.C.M. 1947; Ap. p. Sec. 114, Ch. 368, L. 1969; Sec. 23-3614, R.C.M. 1947; R.C.M. 1947, 23-3015(4), 23-3614; amd. Sec. 134, Ch. 571, L. 1979.**

Cross-References

Oath to test voter qualifications, 13-13-306.

13-13-305. Election judges' powers concerning challenges. The election judges may require the challenged elector to produce one or more electors of the county to be examined under oath as to the qualifications of the challenged elector and may also request assistance from the county attorney and the registrar in determining the elector's qualifications.

History: **En. Sec. 34, Ch. 368, L. 1969; amd. Sec. 11, Ch. 365, L. 1977; R.C.M. 1947, 23-3015(5).**

13-13-306. Proceedings pursuant to challenges — oaths. (1) If the challenge is on the ground that the individual is not the elector whose name appears on the official register, the election judges shall administer the following oath: "I, ... (name of elector), do swear (or affirm) that I am the individual whose name is entered on the official register and precinct list."

(2) If the challenge is on the ground that the individual does not reside at the residence listed, the judges shall administer this oath: "I, ... (name of elector), do swear (or affirm) that I reside at ...... (state precise address), which is the address listed on the official register."

(3) If the challenge is on the ground that the individual has voted before in that election, the judges shall administer this oath: "I, ... (name of elector), do swear (or affirm) that I have not voted before in this election."

(4) If the challenge is on the ground that the individual has been convicted of a felony and is serving a sentence in a penal institution, the judges shall administer the following oath: "I, ... (name of elector), do swear (or affirm) either that I have not been convicted of a felony or that, if I have been convicted of a felony, I am not serving a sentence in a penal institution."

(5) The election judges may administer any other oath relating to the individual's qualification to vote that they feel necessary.

History: En. Sec. 112, Ch. 368, L. 1969; amd. Sec. 34, Ch. 365, L. 1977; R.C.M. 1947, 23-3612; amd. Sec. 135, Ch. 571, L. 1979.

Cross-References

Duty to administer oaths, 13-13-304.

Criminal provisions relating to illegal voting, 13-35-210.

Oath for challenges at school elections, 20-20-303.

13-13-307. Determination of challenges. Challenges are determined in favor of the individual challenged by his taking the oath tendered.

History: En. Sec. 113, Ch. 368, L. 1969; amd. Sec. 35, Ch. 365, L. 1977; R.C.M. 1947, 23-3613; amd. Sec. 136, Ch. 571, L. 1979.

13-13-308. Repealed. Sec. 407, Ch. 571, L. 1979.

History: En. Sec. 115, Ch. 368, L. 1969; R.C.M. 1947, 23-3615.

13-13-309. Proceedings after determination of challenge. If the challenge is determined against the individual offering to vote, the individual may not be allowed to receive a ballot or vote by any other means and the precinct register shall be so marked. If determined in favor of the individual offering to vote, he shall be allowed to vote.

History: En. Sec. 116, Ch. 368, L. 1969; R.C.M. 1947, 23-3616; amd. Sec. 137, Ch. 571, L. 1979.

13-13-310. List of challenges to be kept. The election judges shall keep a list showing:

(1) the names of all individuals challenged;
(2) the name of the elector or judge offering the challenge, if known;
(3) the grounds of each challenge;
(4) the determination of the election judges upon the challenge.

History: En. Sec. 117, Ch. 368, L. 1969; R.C.M. 1947, 23-3617; amd. Sec. 138, Ch. 571, L. 1979.

13-13-311. Vote by challenged elector. (1) Whenever an individual's right to vote at an election is challenged under 13-2-404 or 13-13-301 and the challenge has been determined in favor of the individual challenged as provided in 13-13-307, an election judge shall write in the pollbook at the end of the individual's name the words "challenged and sworn", with the name of the challenger, if known. The elector so challenged must be allowed to vote. The election judge shall then write upon the back of the ballot offered by the challenged elector the number of his ballot. The ballot may be cast out if it appears to the court to have been for any reason wrongfully or illegally voted.

(2) Placing information on a ballot or pollbook under the provisions of subsection (1) or of 13-13-204(2) or divulging such information in a legal proceeding subsequent to the election does not constitute a violation of 13-35-202 or 13-35-207.

History: En. Sec. 133, Ch. 571, L. 1979; amd. Sec. 12, Ch. 298, L. 1987.

Cross-References

Criminal provisions relating to illegal voting, 13-35-210.

CHAPTER 14

NONPARTISAN ELECTIONS

Part 1 — General Provisions

13-14-101 through 13-14-104. Repealed.
13-14-105 through 13-14-110 reserved.
13-14-111. Application of general laws.
13-14-112. Declarations for nomination — fee.
13-14-113. Filing for offices without salary or fees.
13-14-114. Register of candidates.
13-14-115. Preparation and distribution of nonpartisan primary ballots — determination on conducting a primary.
13-14-116. Counting and canvassing of nonpartisan ballots.
13-14-117. Placing names on ballots for general election.
13-14-118. Vacancies among nominees after nomination and before general election.

Part 2 — Judicial Offices

13-14-201 through 13-14-208. Repealed.
13-14-209 and 13-14-210 reserved.
13-14-211. Judicial offices separate and independent offices for election purposes.
13-14-212. Form of ballot on retention of certain incumbent judicial officers.
13-14-213. Form of ballot on retention for other judicial offices.

Chapter Cross-References

Vacancy in Judicial Nomination Commission, 3-1-1014.

Election of Supreme Court Justices, Title 3, ch. 2, part 1.

Election of Clerk of Supreme Court, 3-2-401.

Election of City Judge, 7-3-1342, 7-3-4462.

Vacancy on Board of County Commissioners, 7-4-2106.

Vacancy in county office, 7-4-2206.

Definitions applicable to this chapter, 13-1-101.

Part 1
General Provisions

Part Cross-References

Nonpartisan elections — local government, 7-3-219, 7-3-314, 7-3-413, 7-3-513, 7-3-603, 7-3-704.

Election of officials of commission-manager government, 7-3-4341.

13-14-101 through 13-14-104. Repealed. Sec. 407, Ch. 571, L. 1979.

Compiler's Comments

Histories of Repealed Sections:

13-14-101. (1), (2)En. Sec. 225, Ch. 368, L. 1969; Sec. 23-4501, R.C.M. 1947; (3)En. Sec. 230, Ch. 368, L. 1969; Sec. 23-4506, R.C.M. 1947; R.C.M. 1947, 23-4501, 23-4506(3).

13-14-102. En. Sec. 226, Ch. 368, L. 1969; R.C.M. 1947, 23-4502.

13-14-103. En. Sec. 227, Ch. 368, L. 1969; R.C.M. 1947, 23-4503.

13-14-104. En. Sec. 228, Ch. 368, L. 1969; R.C.M. 1947, 23-4504.

13-14-105 through 13-14-110 reserved.

13-14-111. Application of general laws. Candidates for nonpartisan offices, including judicial offices, shall be nominated and elected according to the provisions of this title except as otherwise provided in this chapter.

History: En. Sec. 139, Ch. 571, L. 1979.

13-14-112. Declarations for nomination — fee. (1) Nonpartisan candidates shall file declarations for nomination as required by the primary election laws in a form prescribed by the secretary of state except as provided in 13-14-113.

(2) Declarations may not indicate political affiliation. The candidate may not state in his declaration any principles or measures he advocates or any slogans.

(3) Each individual filing a declaration shall pay the fee prescribed by law for the position he seeks.

(4) Declarations shall be filed in the office of the secretary of state or the appropriate election administrator as provided in 13-10-201. Time of filing shall be the same as provided in 13-10-201.

History: En. Sec. 140, Ch. 571, L. 1979.

Cross-References

Declaration for nomination for primary election, 13-10-201.

Filing fees, 13-10-202.

13-14-113. Filing for offices without salary or fees. (1) Candidates for nonpartisan offices for which no salary or fees are paid shall file with the appropriate official a petition for nomination containing the same information and the oath of the candidate required for a declaration of nomination in a form prescribed by the secretary of state.

(2) The petition must contain the signatures of registered electors of the election district in which the office will be on the ballot. The number of signatures must be equal to 5% of the total vote cast for the successful candidate for that office at the last general election, but in no case may it be less than five signatures.

(3) The number of signatures necessary for a petition for nomination for an office not previously on the ballot or for which the election district bounda-

ries have changed since the last general election shall be determined by the secretary of state.

(4) Petitions for nomination shall be filed at the same time provided in 13-10-201 for other candidates and offices.

History: En. Sec. 141, Ch. 571, L. 1979.

Cross-References

Election of urban transportation district board, 7-14-214.

Election of board of trustees of fire district, 7-33-2106.

Election of board of trustees for hospital district, 7-34-2116.

Declaration of nomination, 13-10-201.

13-14-114. Register of candidates. On receipt of a declaration or petition, the secretary of state or election administrator shall, if a register is kept, make an entry in the register of candidates for nomination, on a page different from entries made for candidates of political parties.

History: En. Sec. 142, Ch. 571, L. 1979; amd. Sec. 2, Ch. 99, L. 1987.

Cross-References

Primary elections and nominations — register of candidates, 13-10-205.

13-14-115. Preparation and distribution of nonpartisan primary ballots — determination on conducting a primary. (1) The election administrators shall arrange, prepare, and distribute primary ballots for nonpartisan offices, designated "nonpartisan primary ballots". The ballots must be arranged as other primary ballots and be without political designation.

(2) The number of nonpartisan primary ballots and sample ballots furnished must be the same as other primary ballots.

(3) (a) The election administrator of a political subdivision may determine that a primary need not be held if:

(i) the number of candidates for an office exceeds three times the number to be elected to that office in no more than one-half of the offices on the ballot; and

(ii) the number of candidates in excess of three times the number to be elected is not more than one for any office on the ballot.

(b) If the election administrator determines that a primary election need not be held pursuant to subsection (3)(a), the administrator shall give notice to the governing body that no primary election will be held.

(4) The governing body may require that a primary election be held if it passes a resolution not more than 10 days after the close of filing by candidates for election, stating that a primary election must be held.

History: (1), (2)En. Sec. 143, Ch. 571, L. 1979; (3)En. Sec. 1, Ch. 359, L. 1979; amd. Sec. 1, Ch. 123, L. 1985; amd. Sec. 13, Ch. 591, L. 1991; amd. Sec. 1, Ch. 135, L. 1995.

Compiler's Comments

1995 Amendment: Chapter 135 in (3)(a)(i) and (3)(a)(ii) substituted "three times" for "twice"; and made minor changes in style.

Cross-References

Duties of officials when election not held, 13-1-304.

Arrangement of primary ballots, 13-10-209.

13-14-116. Counting and canvassing of nonpartisan ballots. (1) After closing the polls, the election officers shall separately count, canvass, record, and certify nonpartisan ballots, showing the number of votes cast for each person, except as provided in 13-15-202.

(2) Nonpartisan ballots, stubs, and unused ballots must be disposed of in the same manner as other ballots, stubs, and unused ballots. Returns must be made as provided by law.

History: En. Sec. 144, Ch. 571, L. 1979; amd. Sec. 3, Ch. 391, L. 1989.

Cross-References

Disposition of ballots, 13-1-303, 13-15-205.

Declaration of intent for write-in candidates, 13-10-211.

Election returns, 13-15-101.

13-14-117. Placing names on ballots for general election. (1) Except as provided in subsection (2), candidates for nomination equal to twice the number to be elected at the general election who receive the highest number of votes cast at the primary are the nominees for the office. If the number of candidates is not more than twice the number to be elected, then all candidates are nominees for the office.

(2) If, pursuant to 13-14-115(3), a primary election is not held, then all candidates who filed for an office are nominees for the office.

History: En. Sec. 145, Ch. 571, L. 1979; amd. Sec. 2, Ch. 135, L. 1995.

Compiler's Comments

1995 Amendment: Chapter 135 at beginning of (1) inserted exception clause; and inserted (2) relating to procedure when primary election is not held.

13-14-118. Vacancies among nominees after nomination and before general election. (1) If after the primary a candidate is not able to run for the office for any reason, the vacancy shall be filled by the candidate next in rank in number of votes received in the primary election.

(2) If a vacancy for a nonpartisan nomination cannot be filled as provided in subsection (1) and the vacancy occurs no later than 75 days before the general election, a 10-day period for accepting declarations for nomination or statements of candidacy and nominating petitions for the office shall be declared by:

(a) the governor for national, state, judicial district, legislative, or any multicounty district office;

(b) the governing body of the appropriate political subdivision for all other offices.

(3) The names of the candidates who filed as provided in subsection (2) shall be certified and printed on the general election ballot in the same manner as candidates nominated in the primary.

(4) If the vacancy occurs later than 75 days before the general election and no qualified individual is elected to the office at the general election, the office shall be vacant and shall be filled as provided by law.

History: En. Sec. 146, Ch. 571, L. 1979; amd. Sec. 33, Ch. 250, L. 1985.

Part 2

Judicial Offices

Part Cross-References

The judiciary — constitutional provisions, Art. VII, Mont. Const.

Selection of judicial officers, Art. VII, sec. 8, Mont. Const.

Supreme Court Justices — qualifications, Art. VII, sec. 9, Mont. Const.; 3-2-102.

District Court Judges — qualifications, Art. VII, sec. 9, Mont. Const.; 3-5-202.

Forfeiture of judicial position on filing for nonjudicial elective office, Art. VII, sec. 10, Mont. Const.

Resignation of judge required prior to becoming candidate for another public office, 3-1-607, 3-1-608.

Vacancy on Supreme or District Court, Title 3, ch. 1, part 10.

Election of Justices of the Peace, 3-10-201.

Unlawful for political party to endorse judicial candidate, 13-35-231.

13-14-201 through 13-14-208. Repealed. Sec. 407, Ch. 571, L. 1979.

Compiler's Comments

Histories of Repealed Sections:

13-14-201. En. Sec. 229, Ch. 368, L. 1969; R.C.M. 1947, 23-4505.

13-14-202. En. Sec. 230, Ch. 368, L. 1969; R.C.M. 1947, 23-4506(1), (2).

13-14-203. En. Sec. 231, Ch. 368, L. 1969; R.C.M. 1947, 23-4507.

13-14-204. En. Sec. 232, Ch. 368, L. 1969; R.C.M. 1947, 23-4508.

13-14-205. En. Sec. 233, Ch. 368, L. 1969; R.C.M. 1947, 23-4509.

13-14-206. En. Sec. 234, Ch. 368, L. 1969; R.C.M. 1947, 23-4510.

13-14-207. En. Sec. 1, Ch. 22, L. 1973; R.C.M. 1947, 23-4510.1.

13-14-208. En. Sec. 2, Ch. 22, L. 1973; R.C.M. 1947, 23-4510.2.

13-14-209 and 13-14-210 reserved.

13-14-211. Judicial offices separate and independent offices for election purposes. (1) Each vacancy for justice of the supreme court is a separate and independent office for election purposes. The chief justice of the supreme court shall assign an individual number to the justices and certify these numbers to the office of the secretary of state.

(2) Each vacancy for judicial office in a district which has more than one district judge is a separate and independent office for election purposes.

(3) Each vacancy for office in a county which has more than one justice of the peace is a separate and independent office for election purposes.

History: En. Sec. 147, Ch. 571, L. 1979.

Cross-References

Vacancies on Supreme and District Court, Title 3, ch. 1, part 10.

Justice of the Peace as separate and independent office, 3-10-201.

13-14-212. Form of ballot on retention of certain incumbent judicial officers. In the event there is no candidate other than the incumbent for the office of chief justice, supreme court justice, district court judge, or justice of the peace, the name of the incumbent shall be placed on the official ballot for the general election as follows:

Shall (insert title of officer) (insert name of the incumbent officer) of the (insert title of the court) of the state of Montana be retained in office for another term?

☐ YES

☐ NO

(Mark an "x" before the word "YES" if you wish the official to remain in office. Mark an "x" before the word "NO" if you do not wish the official to remain in office.)

History: En. Sec. 148, Ch. 571, L. 1979.

Cross-References

Justices of the Peace elected in same manner as District Court Judge, 3-10-201.

13-14-213. Form of ballot on retention for other judicial offices. The election administrator or secretary of state shall use the form prescribed in 13-14-212 to place the name of an unopposed incumbent for a judicial office on the general election ballot if such office is subject to the provisions of Article VII, Section 8, of The Constitution of the State of Montana.

History: **En. Sec. 149, Ch. 571, L. 1979.**

CHAPTER 15

CANVASSING, RETURNS, AND CERTIFICATES

Part 1 — General Provisions

13-15-101. Votes to be publicly counted upon closing of polls.
13-15-102. Defect in form of returns to be disregarded.
13-15-103. Counting board.
13-15-104. Counting board for absentee ballots.
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Part 2 — Procedure for Canvass

13-15-201. Preparation for count.
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13-15-204. Signing and certifying pollbook.
13-15-205. Items to be delivered to election administrator by election judges — disposition of other items.

Part 3 — Registrar's Duties

13-15-301. Disposition of items by election administrator.
13-15-302. Repealed.

Part 4 — County Canvass

13-15-401. Governing body as board of county canvassers.
13-15-402. Canvass of votes by board — procedures if all returns not received by time of canvass.
13-15-403. Canvass to be public — nonessentials to be disregarded — petition for recount.
13-15-404. Information to be entered on record.
13-15-405. Declaration or certification of results.
13-15-406. Certificates to be issued by the election administrator.

Part 5 — State Canvass

13-15-501. Certification of canvass to state canvassers.
13-15-502. Composition and meeting of board of state canvassers.
13-15-503. Notification if returns not received from counties.
13-15-504. Governor to issue commissions.
13-15-505. Canvass to be public — procedure.
13-15-506. Report of the canvass.
13-15-507. Declaration, proclamation, and certification of results.

Chapter Cross-References

Definitions applicable to this chapter, 13-1-101.

Criminal acts relating to canvassing, returns, and certificates, Title 13, ch. 35.

School elections, Title 20, ch. 20.

Part 1
General Provisions

13-15-101. Votes to be publicly counted upon closing of polls. (1) When the polls are closed, the election judges shall immediately count the votes. The count shall be public and continue without adjournment until completed and the result is publicly declared.

(2) Immediately after all the ballots are counted by precinct, the election judges shall copy the total votes cast for each candidate and for and against each proposition on the return forms furnished by the election administrator.

(3) The election judges shall immediately post one of the return forms at the place of counting and return a copy to the election administrator. Both forms shall be signed by all the election judges completing the count.

History: En. Secs. 88, 171, Ch. 368, L. 1969; R.C.M. 1947, 23-3505, 23-4001; amd. Sec. 151, L. 1979; amd. Sec. 1, Ch. 100, L. 1987; amd. Sec. 13, Ch. 298, L. 1987.

Cross-References

Disposition of return form, 13-15-205.

13-15-102. Defect in form of returns to be disregarded. No declaration of an election result, commission, or certificate shall be withheld because of a defect or informality in the returns of any election if it can be determined with reasonable certainty the office intended and the person elected.

History: En. Sec. 189, Ch. 368, L. 1969; R.C.M. 1947, 23-4019.

13-15-103. Counting board. (1) In any precinct where a counting board has been appointed in addition to the regular board of election judges, the counting board shall meet at a place designated by the election administrator.

(2) The election administrator may provide duplicate boxes for voted ballots and duplicate pollbooks at any precinct for which a counting board has been appointed and may arrange for the counting board to begin the count of the votes cast before the polls close. The counting board shall be sequestered in a separate room from where the ballots are being cast until after the polls close. Any individual observing the counting board procedures must be sequestered with the board until after the polls close. The counting board shall proceed by counting all ballots in the first box and then that box and pollbook shall be exchanged for the second box and duplicate pollbook. The board shall continue counting until the votes cast for all candidates and issues are counted. The election administrator may appoint an extra election judge to act as a marshal to be responsible for exchanging ballot boxes and pollbooks and enforcing sequestering of the board and observers.

(3) The election administrator may have the counting board for a precinct begin work as soon as the polls close instead of using the procedure outlined in subsection (2).

(4) In a county where voting devices are used, the election administrator may make provisions for the delivery of voted ballots to the counting center at any time prior to the closing of the polls. The ballots may be processed and counted as they are received, but the results of this early count may not be released to the public until after all the polls are closed.

(5) No election judge or other individual having access to the information may disclose any results of early counting while the polls are open.

History: En. Sec. 150, Ch. 571, L. 1979.

Cross-References

Appointment of Counting Board, 13-4-101.

Violation of duty as official misconduct, 13-35-204.

13-15-104. Counting board for absentee ballots. (1) The election administrator shall:

(a) give special instructions to any counting board for absentee ballots appointed under 13-4-101 on the proper procedures for counting the absentee ballots; and

(b) provide the forms and supplies necessary for the board to perform its duties.

(2) The counting board for absentee ballots shall:

(a) be sequestered in a room separate from where ballots are being cast;

(b) at any time prior to the closing of the polls but not before the polls open, start the count of the absentee votes cast; and

(c) follow the procedures outlined in 13-13-241 and 13-15-103 for the counting of the votes cast.

(3) No election judge or other individual having access to any results of early counting may disclose the information while the polls are open, and he must remain sequestered until the closing of the polls.

(4) (a) In addition to the official oath taken and subscribed to by the election judges, the members of the counting board for absentee ballots shall complete and sign the following affirmation: "I, ..., will not discuss or disclose or allow anyone else to discuss or disclose to anyone the results of the early counting of votes while the polls are open."

(b) The chief election judge shall witness and sign the affirmation.

History: En. Sec. 5, Ch. 120, L. 1983; amd. Sec. 14, Ch. 298, L. 1987.

Cross-References

Procedure for electors absent from polling place, Title 13, ch. 13, part 2.

13-15-105. Notices relating to counting board for absentee ballots. Whenever a counting board for absentee ballots is appointed under 13-4-101, the election administrator shall:

(1) publish in the contracted newspaper of the county as provided in 7-5-2411 a notice indicating that such a method will be used for counting absentee ballots;

(2) post in a conspicuous location at the office of the election administrator, by 5 p.m. of the day before an election, a notice that indicates the place and time the counting board for absentee ballots will meet on election day. The notice must inform the public that any person observing the procedures of the counting board must be sequestered with the board until the polls are closed and the counting board is released and must take the oath provided in 13-15-104.

History: En. Sec. 6, Ch. 120, L. 1983.

Cross-References

Procedure for electors absent from polling place, Title 13, ch. 13, part 2.

13-15-106 through 13-15-110 reserved.

13-15-111. Write-in elections — general election. (1) An individual elected by having his name written in at the general election and receiving the largest number of votes shall:

(a) file with the secretary of state or election administrator, not later than 10 days after the official canvass, a written declaration indicating his acceptance of the position for which he was elected;

(b) comply with the provisions of 13-37-225; and

(c) pay the required filing fee or, if indigent, comply with 13-10-203.

(2) If an individual fails to file the declaration as required under subsection (1)(a), he may not assume the position for which he was elected.

History: En. Sec. 4, Ch. 298, L. 1987; amd. Sec. 14, Ch. 591, L. 1991.

Part 2

Procedure for Canvass

13-15-201. Preparation for count. (1) To begin the count after the close of the polls, the election judges shall take ballots out of the box unopened to determine whether each ballot is single.

(2) They shall count the ballots to ensure that the number of ballots corresponds with the number of names on the pollbook.

(3) If they cannot reconcile the total number of ballots with the pollbook they must submit a written report stating how many ballots were missing or in excess and any reason of which they are aware for the discrepancy. All judges must sign the report.

(4) A ballot which is not endorsed by the official stamp is void and may not be counted unless the judges agree the stamp is missing because of their error. Such ballot shall be marked “unstamped by error” on the back and must be initialed by all judges.

(5) If two or more ballots are folded together to look like a single ballot, they shall be laid aside until the count is complete. The election judges shall compare the count with the pollbooks, and if a majority believes that the ballots folded together were voted by one elector, they must be rejected; otherwise they must be counted.

History: En. Sec. 172, Ch. 368, L. 1969; R.C.M. 1947, 23-4002; amd. Sec. 152, Ch. 571, L. 1979.

13-15-202. Counting votes cast — pollbook. (1) (a) When the procedures required by 13-15-201 are completed, the election judges shall count and determine the votes cast for each individual, except as provided in subsection (1)(b).

(b) The judges may not count or record write-in votes for candidates who have not filed a declaration of intent as provided in 13-10-211, except for write-in votes cast:

(i) for the office of precinct committeeman or committeewoman in a primary election;

(ii) for an office for which no candidate has filed a declaration or petition for nomination or a declaration of intent; or

(iii) on a federal write-in absentee ballot as provided in 13-13-273.

(2) In counting, the ballots shall be opened singly by one of the election judges and the contents read aloud to the other judges.

(3) A ballot or part of a ballot is void and may not be counted if the elector's choice cannot be determined. If part of a ballot is sufficiently plain to determine the elector's intention, the election judges shall count that part. Except as provided in 13-10-211(4), a write-in vote may be counted only if the write-in vote identifies an individual by any of the designations filed pursuant to 13-10-211(1)(a).

(4) As the ballots are read, two judges must write on a tally sheet the name of every individual and the office voted for and keep tallies of the number of votes for each individual, except as provided in subsection (1)(b).

(5) The tally sheets shall be compared and their correctness ascertained, and the judges shall immediately write in the pollbook:

(a) the names of all individuals who received votes;
(b) the offices for which they received votes;
(c) total votes received by each individual as shown by the tally sheets.

(6) In making the count in precincts where voting machines are used, the votes cast by absentee ballot shall be added to the votes cast on the voting machines.

(7) A ballot or vote rejected by the election judges may not be included in the count.

History: En. Secs. 134, 173, Ch. 368, L. 1969; R.C.M. 1947, 23-3716(3), 23-4003; amd. Sec. 153, Ch. 571, L. 1979; amd. Sec. 4, Ch. 391, L. 1989; amd. Sec. 3, Ch. 143, L. 1995.

Compiler's Comments

1995 Amendment: Chapter 143 in (3) inserted third sentence requiring identification of individual by certain designations; and made minor changes in style.

Cross-References

Declaration of intent for write-in candidates, 13-10-211.

Presumption of incorrectness raised by failure to comply with this section, 13-16-303.

13-15-203. Marking rejected ballots. A ballot rejected for illegality shall be marked by the election judges by writing across the face, "rejected on the ground of ....", filling the blank with a brief statement of the reasons for the rejection. The statement shall be dated and signed by a majority of the judges.

History: En. Sec. 174, Ch. 368, L. 1969; R.C.M. 1947, 23-4004.

13-15-204. Signing and certifying pollbook. Immediately after the votes are counted and the ballots sealed up, the pollbook shall be signed and certified to by the election judges in a form prescribed by the secretary of state.

History: En. Sec. 175, Ch. 368, L. 1969; R.C.M. 1947, 23-4005; amd. Sec. 154, Ch. 571, L. 1979.

13-15-205. Items to be delivered to election administrator by election judges — disposition of other items. (1) Before they adjourn, the election judges shall enclose in a strong envelope or package, securely fastened:

(a) the precinct register;
(b) the list of individuals challenged;
(c) the pollbook;
(d) both of the tally sheets.

(2) The election judges shall enclose in a separate package or envelope, securely sealed, all unused ballots with the numbered stubs attached.

(3) The election judges shall enclose in a separate package or envelope, securely sealed, all ballots voted, including those not counted or allowed, and

detached stubs from all counted or rejected absentee ballots. This envelope shall be endorsed on the outside "ballots voted". At the primary election the unvoted party ballots shall be enclosed in a separate package or envelope, securely sealed, and marked on the outside "unvoted ballots".

(4) Each election judge shall write his name across all seals.

(5) The return form provided for in 13-15-101 shall be returned with the items provided for in this section but may not be sealed in any of the packages.

(6) The envelopes or packages required by this section shall be delivered to the election administrator by the chief election judge or another judge appointed by the chief judge in the manner ordered by the election administrator.

(7) The election administrator shall instruct the chief election judge in writing on the proper disposition of all other election materials and supplies.

History: En. Sec. 176, Ch. 368, L. 1969; R.C.M. 1947, 23-4006; amd. Sec. 155, Ch. 571, L. 1979.

Part 3
Registrar's Duties

13-15-301. Disposition of items by election administrator. (1) The election administrator shall file the envelopes or packages containing the precinct registers, pollbooks, tally sheets, certificates of registration, and oaths of election officers. He shall keep them unopened until the county board of canvassers meets to canvass the returns. The board shall open the envelopes or packages.

(2) Immediately after the returns are canvassed, the election administrator shall file the pollbooks, election records, and the papers delivered to the board of canvassers with the unopened packages of ballots and ballot stubs.

History: En. Sec. 177, Ch. 368, L. 1969; amd. Sec. 1, Ch. 100, L. 1974; R.C.M. 1947, 23-4007; amd. Sec. 156, Ch. 571, L. 1979.

Cross-References

Election records open to public, 13-1-109.

13-15-302. Repealed. Sec. 407, Ch. 571, L. 1979.

History: En. Sec. 178, Ch. 368, L. 1969; R.C.M. 1947, 23-4008.

Part 4
County Canvass

13-15-401. Governing body as board of county canvassers. (1) The governing body of a county, consolidated, or confederated local government is ex officio a board of county canvassers and shall meet as the board of county canvassers at the usual place of meeting of the governing body within 3 days after each election, at a time determined by the board, to canvass the returns.

(2) If one or more of the members of the governing body cannot attend the meeting, the member's place must be filled by one or more county officers chosen by the remaining members of the governing body so that the board of county canvassers' membership equals the membership of the governing body.

(3) The governing body of any political subdivision in the county that participated in the election may join with the governing body of the county,

consolidated, or confederated local government in canvassing the votes cast at the election.

(4) The election administrator is secretary of the board of county canvassers and shall keep minutes of the meeting of the board and file them in the official records of the administrator's office.

History: En. Sec. 179, Ch. 368, L. 1969; R.C.M. 1947, 23-4009; amd. Sec. 157, Ch. 571, L. 1979; amd. Sec. 1, Ch. 118, L. 1995.

Compiler's Comments

1995 Amendment: Chapter 118 at end of (1) substituted "a time determined by the board" for "8 a.m."; and made minor changes in style.

Cross-References

County officers, 7-4-2203.

13-15-402. Canvass of votes by board — procedures if all returns not received by time of canvass. (1) If all returns are in at the time of the meeting, the board of county canvassers shall immediately canvass the returns.

(2) If all returns are not received, the board shall postpone the canvass from day to day until all returns are received.

(3) If the returns from an election precinct have not been received by the election administrator within 3 days after an election, he shall immediately advise the chief election judge.

(4) If it appears to the board that the polls were not open in a precinct, the board shall certify this to the election administrator. The election administrator shall enter the certification in the minutes and in the record required by 13-15-404.

History: En. Sec. 180, Ch. 368, L. 1969; R.C.M. 1947, 23-4010; amd. Sec. 158, Ch. 571, L. 1979.

13-15-403. Canvass to be public — nonessentials to be disregarded — petition for recount. (1) The canvass shall be public. It shall proceed by opening the returns, auditing the tally books or other records of votes cast, determining the vote for each individual and for and against each ballot issue from each precinct, compiling totals, and declaring or certifying the results.

(2) The board shall record all write-in votes shown in the returns from each precinct.

(3) The returns may not be rejected because of failure to show who administered the oath to the election judges, failure to complete all the certificates in a pollbook, or because of failure of any other act making up the returns that is not essential to determine for whom the votes were cast.

(4) If during a canvass the board finds an error in a precinct or precincts affecting the accuracy of vote totals, the board immediately may petition for a recount of the votes cast in the precinct or precincts, as provided in 13-16-201, or for an inspection of ballots, as provided in 13-16-420.

History: En. Sec. 181, Ch. 368, L. 1969; amd. Sec. 44, Ch. 365, L. 1977; R.C.M. 1947, 23-4011; amd. Sec. 159, Ch. 571, L. 1979; amd. Sec. 1, Ch. 19, L. 1987; amd. Sec. 15, Ch. 591, L. 1991.

13-15-404. Information to be entered on record. (1) The secretary of the board shall prepare and file in the official records of his office a report of the canvass which lists:

(a) the total number of electors voting in each precinct, district, or portion of a district in the county and the total in the county;

(b) the name of each individual receiving votes and the office for which the votes were received;

(c) the number and title of each ballot issue;

(d) the votes by precinct, district, or portion of a district within the county for each individual and for and against each ballot issue;

(e) the total votes in the county for each individual and for and against each ballot issue; and

(f) for municipal elections, the total number of electors voting in each municipality and the votes by municipality for each individual and for and against each ballot issue.

(2) Write-in votes for an individual shall be entered in the report in the same place as the votes for other individuals for the same office but shall be identified as write-in votes.

History: **En. Sec. 182, Ch. 368, L. 1969; R.C.M. 1947, 23-4012; amd. Sec. 160, Ch. 571, L. 1979; amd. Sec. 2, Ch. 70, L. 1983.**

Cross-References

Election Administrator as secretary of Board of County Canvassers, 13-15-401.

13-15-405. Declaration or certification of results. (1) The board shall declare nominated or elected the individuals having the highest number of votes cast for each county and precinct office, except as provided in 13-10-204.

(2) The board shall proclaim the adoption or rejection of a county ballot issue.

(3) The board shall certify the results of the canvass of votes cast for individuals for political subdivision offices and for and against political subdivision ballot issues to the governing body of each political subdivision participating in the election.

(4) If there is a tie vote for a county office, an office of a political subdivision wholly within the county, a precinct office, or a ballot issue voted on only in that county or portion of that county, the board shall certify the vote to the election administrator.

(5) The board shall certify the results of the canvass of votes cast for justice of the peace, city judge, and municipal court judge to the supreme court in order to ensure compliance with 3-1-1502 or 3-1-1503.

History: **En. Secs. 183, 192, Ch. 368, L. 1969; amd. Secs. 45, 48, Ch. 365, L. 1977; R.C.M. 1947, 23-4013(1), 23-4103(5); amd. Sec. 161, Ch. 571, L. 1979; amd. Sec. 6, Ch. 317, L. 1991.**

Cross-References

Result of elections, Art. IV, sec. 5, Mont. Const.

County abandonment and consolidation elections, 7-2-2712.

Recount for tie vote, 13-16-203.

13-15-406. Certificates to be issued by the election administrator. The election administrator shall, except as provided in 13-37-127, deliver a certificate of nomination or election to each individual declared elected by the board.

History: **En. Sec. 184, Ch. 368, L. 1969; amd. Sec. 46, Ch. 365, L. 1977; R.C.M. 1947, 23-4014; amd. Sec. 162, Ch. 571, L. 1979.**

Part 5
State Canvass

13-15-501. Certification of canvass to state canvassers. (1) The board of county canvassers shall certify the vote for each individual for whom votes were cast for the offices of president and vice president of the United States, congressional offices, state or district offices voted for in more than one county, members of the legislature, judges of the district court, and for and against ballot issues voted on in more than one county to the board of state canvassers. The certification shall contain all the information required in 13-15-404 for such candidates and issues.

(2) The secretary of the board shall send the certification to the secretary of state by certified mail in an envelope marked "election returns".

History: En. Sec. 185, Ch. 368, L. 1969; amd. Sec. 47, Ch. 365, L. 1977; R.C.M. 1947, 23-4015; amd. Sec. 163, Ch. 571, L. 1979.

Cross-References

County abandonment and consolidation elections, 7-2-2712.

Election Administrator as secretary of County Board, 13-15-401.

Determination of results of ballot issues, 13-27-503.

13-15-502. Composition and meeting of board of state canvassers. Within 20 days after the election, or sooner if the returns are all received, the state auditor, superintendent of public instruction, and attorney general shall meet as a board of state canvassers in the office of the secretary of state and determine the vote. The secretary of state shall serve as secretary of the board, keep minutes of the meeting of the board, and file them in the official records of his office.

History: En. Sec. 186, Ch. 368, L. 1969; amd. Sec. 21, Ch. 365, L. 1977; R.C.M. 1947, 23-4016; amd. Sec. 164, Ch. 571, L. 1979.

Cross-References

Board of Canvassers allocated to office of Secretary of State, 2-15-412.

13-15-503. Notification if returns not received from counties. If the returns from all counties have not been received 3 days before the meeting of the board of state canvassers, the secretary of state shall immediately advise the election administrator of each delinquent county.

History: En. Sec. 187, Ch. 368, L. 1969; R.C.M. 1947, 23-4017; amd. Sec. 165, Ch. 571, L. 1979.

13-15-504. Governor to issue commissions. Upon receipt of the statements required by 13-15-507 and 13-37-127, the governor shall issue commissions to the individuals elected. If the governor has been elected to succeed himself, the secretary of state shall issue the commission.

History: En. Sec. 188, Ch. 368, L. 1969; R.C.M. 1947, 23-4018; amd. Sec. 169, Ch. 571, L. 1979.

Cross-References

Certificates issued by Governor in congressional elections, 13-25-204.

13-15-505. Canvass to be public — procedure. (1) The canvass shall be public. It shall proceed by opening the returns from each county, auditing the records from each county for errors, determining the vote for each individual and for and against each ballot issue in each county, compiling totals, and declaring and certifying the results.

(2) The board shall record all write-in votes shown in the returns received from each county.

History: En. Sec. 166, Ch. 571, L. 1979.

13-15-506. Report of the canvass. (1) The secretary of the board shall prepare and file in the official records of his office a report of the canvass which lists:

(a) the total number of electors voting in each county and in each legislative house district and the total in the state;

(b) the name of each individual receiving votes and the office for which the votes were received;

(c) the number and title of each ballot issue; and

(d) the votes by county and legislative house district and the total votes for each individual and for and against each ballot issue.

(2) Write-in votes for an individual shall be entered in the report in the same place as votes of other individuals for the same office but shall be identified as write-in votes.

History: En. Sec. 167, Ch. 571, L. 1979.

Cross-References

Secretary of State as secretary of State Board, 13-15-502.

13-15-507. Declaration, proclamation, and certification of results. The board shall declare nominated or elected the individual having the highest number of votes cast for each office, except as provided in 13-10-204. The board shall proclaim the adoption or rejection of ballot issues. Certified copies of the report required in 13-15-506, the declaration of nominated or elected individuals, the proclamation of adoption or rejection of ballot issues, and the effective date of adopted ballot issues shall be delivered to the governor.

History: En. Sec. 168, Ch. 571, L. 1979.

Cross-References

Result of elections, Art. IV, sec. 5, Mont. Const.

Secretary of State to certify names of persons receiving highest number of votes for offices commissioned by the Governor, 2-15-401.

CHAPTER 16

RECOUNTS AND TIE VOTES

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13-16-411. Individuals entitled to appear at recount — opening and recount of ballots.
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Chapter Cross-References

Definitions applicable to this chapter, 13-1-101.

Disposition of ballots and other election materials, 13-1-303.

Part 1
County Recount Board

13-16-101. County governing body as county recount board. (1) The county recount board shall consist of three members.

(2) Three members of the governing body shall be appointed by the chairman if there are more than three members of the governing body.

(3) If three members of the governing body cannot attend when the board meets, any vacant place shall be filled by one or more county officers chosen by the remaining members of the governing body.

(4) If a member of the recount board is a candidate for an office or nomination for which votes are to be recounted, he shall be disqualified.

(5) The election administrator is secretary of the recount board, and the board may hire any additional clerks as needed.

(6) The board may appoint county employees or hire clerks to assist as needed.

History: **En. Sec. 203, Ch. 368, L. 1969; R.C.M. 1947, 23-4114; amd. Sec. 170, Ch. 571, L. 1979.**

Cross-References

County officers, 7-4-2203.

Expenses of recount, 13-16-205.

Part 2

Recounts in Close Elections

13-16-201. Conditions under which recount to be made. A recount shall be made under any of the following conditions:

(1) If a candidate for a county, municipal, or district office voted for in only one county, other than a legislator or a judge of the district court, or a precinct office is defeated by a margin not exceeding 1/4 of 1% of the total votes cast or by a margin not exceeding 10 votes, whichever is greater, he may, within 5 days after the official canvass, file with the election administrator a verified petition stating he believes a recount will change the result and a recount of the votes for the office or nomination should be had.

(2) If a candidate for a congressional office, a state or district office voted on in more than one county, the legislature, or judge of the district court is defeated by a margin not exceeding 1/4 of 1% of the total votes cast for all candidates for the same position, he may, within 5 days after the official canvass, file a petition with the secretary of state as set forth in subsection (1). The secretary of state shall immediately notify each election administrator whose county includes any precincts which voted for the same office by certified or registered mail, and a recount shall be conducted in those precincts.

(3) If a question submitted to the vote of the people of a county, municipality, or district within a county is decided by a margin not exceeding 1/4 of 1% of the total votes cast for and against the question, a petition as set forth in subsection (1) may be filed with the election administrator. This petition must be signed by not less than 10 electors of the jurisdiction and must be filed within 5 days after the official canvass.

(4) If a question submitted to the vote of the people of the state is decided by a margin not exceeding 1/4 of 1% of the total votes cast for and against the question, a petition as set forth in subsection (1) may be filed with the secretary of state. This petition must be signed by not less than 100 electors of the state, representing at least five counties of the state, and must be filed within 5 days after the official canvass.

(5) If a question submitted to the vote of the people of a multicounty district is decided by a margin not exceeding 1/4 of 1% of the total votes cast for and against the question, a petition as set forth in subsection (1) may be filed with the secretary of state. This petition must be signed by not less than 25 electors of the district, representing at least two counties, and must be filed within 5 days after the official canvass.

(6) The secretary of state shall immediately notify each election administrator by certified mail of the filing of the petition, and a recount shall be conducted in all precincts in each county.

(7) If during a canvass of election returns a board of county canvassers finds an error, as provided in 13-15-403, the board immediately may file a petition with the election administrator.

History: En. Sec. 192, Ch. 368, L. 1969; amd. Sec. 48, Ch. 365, L. 1977; R.C.M. 1947, 23-4103(1) thru (4); amd. Sec. 171, Ch. 571, L. 1979; amd. Sec. 2, Ch. 19, L. 1987.

13-16-202. Determining total vote cast for all candidates for an office. When an elector may vote for two or more candidates for the same office, the total vote cast for all candidates for the office is the total vote cast for all candidates divided by the number of candidates officially declared nominated or elected as shown by the official returns.

History: En. Sec. 202, Ch. 368, L. 1969; R.C.M. 1947, 23-4113.

13-16-203. Recount for tie votes. When a tie has been certified to the election administrator, as provided in 13-15-405(4), or the secretary of state, he shall proceed as if a petition for a recount has been filed. If a tie exists after the recount, the tie shall be resolved as provided by law.

History: En. Secs. 183, 192, Ch. 368, L. 1969; amd. Secs. 45, 48, Ch. 365, L. 1977; R.C.M. 1947, 23-4013(2), 23-4103(6); amd. Sec. 172, Ch. 571, L. 1979; amd. Sec. 49, Ch. 575, L. 1981.

Cross-References

Procedure in case of tie vote, Title 13, ch. 16, part 5.

13-16-204. Meeting of recount board when recount requested. (1) Immediately upon receiving a petition for a recount or a notice from the secretary of state that a petition has been filed with him, as provided in 13-16-201, the election administrator shall notify the members of the county recount board.

(2) The board shall convene at the usual meeting place of the governing body without undue delay but not later than 5 days after receiving notice from the election administrator.

History: En. Sec. 204, Ch. 368, L. 1969; R.C.M. 1947, 23-4115; amd. Sec. 173, Ch. 571, L. 1979; amd. Sec. 3, Ch. 19, L. 1987.

13-16-205. Expenses of recount. The expense of the recount provided for in 13-16-201 is a county charge. Recount expenses of the secretary of state and board of state canvassers are a state charge.

History: En. Sec. 211, Ch. 368, L. 1969; R.C.M. 1947, 23-4122; amd. Sec. 50, Ch. 575, L. 1981.

13-16-206 through 13-16-210 reserved.

13-16-211. Recounts allowed if bond posted to cover all costs. (1) If a candidate for a public office is defeated by a margin exceeding 1/4 of 1% but not exceeding 1/2 of 1% of the total votes cast for all candidates for the same position, he may, within 5 days after the official canvass, file with the officer with whom his declaration or petition for nomination was filed a petition stating that he believes a recount will change the result of the election.

(2) The unsuccessful candidate shall post a bond with the clerk and recorder of the county in which he resides. The bond must be in an amount set by the clerk and recorder sufficient to cover all costs of the recount incurred by each county in which a recount is sought, including loss of time of regular employees caused by absence from their regular duties.

(3) Upon the filing of a petition and posting of a bond under this section, the board of county canvassers in each county affected shall meet and recount the ballots specified in the petition.

History: En. Sec. 1, Ch. 395, L. 1979.

Part 3
Recounts Under Court Order

13-16-301. Application and court order for recount. (1) (a) Within 5 days after the canvass of election returns, an unsuccessful candidate for any public office at an election may apply to the district court of the county where the election was held for an order directing the county recount board to make a recount of the votes cast in any or all of the precincts. If the election was held in more than one county, the application shall be made to the district court of the county where the candidate resides.

(b) Within 5 days after the canvass of election returns, an elector who was eligible to vote on the issue and who believes that there are grounds for a recount of the votes cast for and against a ballot issue may apply to the district court of the county where he resides for an order directing the appropriate county recount board to make a recount of the votes cast in any or all of the precincts.

(2) The application shall specify the grounds for a recount and be verified by the applicant that the matters contained in it are true to the best of the applicant's knowledge, information, and belief.

(3) Within 5 days after filing of the application, the judge shall hear the application and determine its sufficiency.

(4) If the judge finds there is probable cause to believe that the votes cast for the applicant or the ballot issue were not correctly counted, he shall order the appropriate county recount board to assemble within 5 days after the order is issued at a time and place fixed by the order. The board shall meet and recount the ballots as specified in the order.

History: En. Sec. 190, Ch. 368, L. 1969; R.C.M. 1947, 23-4101; amd. Sec. 174, Ch. 571, L. 1979.

Cross-References

Application of Montana Rules of Civil Procedure, Rule 81(a), M.R.Civ.P. (see Title 25, ch. 20).

13-16-302. Service of copy of application — hearing. The candidate found to be elected as a result of the original or first canvass shall be served with a copy of the application for recount. He shall be given an opportunity to be heard and shall be permitted to be present and to be represented at any recount ordered.

History: En. Sec. 199, Ch. 368, L. 1969; R.C.M. 1947, 23-4110.

13-16-303. Presumption of incorrectness from failure to comply with provisions for counting votes. If it appears from a verified application that the election judges failed to comply with the provisions of 13-15-202, that is sufficient cause for believing that the election judges did not correctly ascertain the number of votes cast for the applicant or ballot issue.

History: **En. Sec. 193, Ch. 368, L. 1969; R.C.M. 1947, 23-4104; amd. Sec. 175, Ch. 571, L. 1979.**

13-16-304. Ordering in another judge — jurisdiction. (1) If the judge of the district court in which the application is filed is for any reason disqualified from acting, the judge or a supreme court justice shall order another district judge to hear and determine the application.

(2) The district court shall not lose jurisdiction of the case by failure to hear and determine the application within the prescribed time but shall retain jurisdiction until the cause is finally determined and the final count is made by the county recount board.

History: **En. Sec. 194, Ch. 368, L. 1969; R.C.M. 1947, 23-4105; amd. Sec. 176, Ch. 571, L. 1979.**

13-16-305. Limitation of recount to certain counties or precincts. (1) If the application asks for a recount in more than one county or precinct but there are not sufficient grounds for a recount in all counties or precincts, the court shall order a recount in only the counties or precincts for which sufficient grounds are stated and shown.

(2) The county recount board shall recount votes only in those counties or precincts and for those offices or ballot issues specified in the court order.

History: **En. Secs. 191, 195, Ch. 368, L. 1969; R.C.M. 1947, 23-4102, 23-4106; amd. Sec. 177, Ch. 571, L. 1979.**

13-16-306. Procedure when more than one application for recount. If more than one candidate makes application for a recount, the court may consider the applications together. The court may make separate or joint orders on the applications and apportion the expenses between the applicants.

History: **En. Sec. 197, Ch. 368, L. 1969; R.C.M. 1947, 23-4108.**

13-16-307. Expenses of court-ordered recount. (1) The court shall in its order determine the probable expense of making the recount, and the applicant or applicants asking for the recount shall deposit with the board the amount determined, in cash.

(2) If the recount shows that an applicant has been elected to office, the deposit of the applicant shall be returned to him.

(3) If the recount shows that an applicant has not been elected and the expense of the recount is greater than the estimated cost, the applicant shall pay the excess; but if the expense is less than the cost, the difference shall be refunded to the applicant.

(4) If the recount reverses the results of a ballot issue election, the deposit of the applicant shall be returned to him.

(5) If the recount does not reverse the results of a ballot issue election and the expense of the recount is greater than the estimated cost, the applicant shall pay the excess; but if the expense is less than the cost, the difference shall be refunded to the applicant.

History: **En. Sec. 196, Ch. 368, L. 1969; R.C.M. 1947, 23-4107; amd. Sec. 178, Ch. 571, L. 1979.**

Part 4

Recount Procedure

13-16-401. Renumbered 13-16-411 by Code Commissioner, 1979.

13-16-402. Renumbered 13-16-412 by Code Commissioner, 1979.

13-16-403. Renumbered 13-16-417 by Code Commissioner, 1979.

13-16-404. Renumbered 13-16-418 by Code Commissioner, 1979.

13-16-405. Renumbered 13-16-419 by Code Commissioner, 1979.

13-16-406 through 13-16-410 reserved.

13-16-411. Individuals entitled to appear at recount — opening and recount of ballots. (1) Representatives of the news media may be present at the recount. The recount shall be public, but the audience may be limited to prevent interference with the procedures.

(2) Each candidate involved in a recount may appear, personally or by representative, and shall have full opportunity to witness the opening of all ballot boxes and the count of all ballots.

(3) If the recount is upon a ballot issue, one qualified elector favoring each side of the question may be present and represent his side.

(4) The recount shall proceed as provided in 13-16-412 and as expeditiously as possible until completed.

History: En. Sec. 205, Ch. 368, L. 1969; R.C.M. 1947, 23-4116(1), (2), (4); amd. Sec. 179, Ch. 571, L. 1979; Sec. 13-16-401, MCA 1979; redes. 13-16-411 by Code Commissioner, 1979.

13-16-412. Procedure for recounting paper ballots. The county recount board in recounting the ballots shall count, at the same time, the votes cast in the precincts in which a recount is ordered for the several candidates in whose behalf a recount is ordered in the following manner:

(1) The election administrator shall produce, unopened, each sealed package or envelope received from the election judges of the precinct or precincts in which a recount is ordered, containing all ballots voted in the precinct or precincts.

(2) A member of the county recount board shall open each sealed package or envelope and remove the ballots.

(3) One of the members of the board shall read each ballot aloud. As the ballots are read, two clerks shall write the votes cast for each individual in each precinct, at full length, on previously prepared tally sheets. The tally sheets shall show the names of the respective candidates, the office or offices for which a recount is made, and the number of each election precinct.

History: En. Sec. 198, Ch. 368, L. 1969; R.C.M. 1947, 23-4109; amd. Sec. 180, Ch. 571, L. 1979; Sec. 13-16-402, MCA 1979; redes. 13-16-412 by Code Commissioner, 1979.

13-16-413. Recount of votes cast by machine. The recount board shall remove the seals from the voting machines in all precincts where a recount is required and proceed to record the votes cast for all candidates or on all ballot issues for which the recount is ordered in the same manner as the count is made after the closing of the polls. Any paper ballots voted in the precincts shall be recounted as prescribed in 13-16-412.

History: En. Sec. 181, Ch. 571, L. 1979.

13-16-414. Recount of votes cast by voting devices. (1) The recount board shall test the automatic tabulating equipment used for votes cast by voting devices. If the test does not show any errors, the votes cast for the candidates or on the issues for which a recount is ordered shall be recounted by the tabulating equipment.

(2) If any errors are found in the test or if any questions remain as to the accuracy of the count, the board may have the program and equipment checked by a qualified individual who did not participate in the original preparation of the program and equipment.

(3) The board may also order manual counting of the votes cast if they believe it is necessary to resolve all questions relating to the election.

(4) The board may remove the seals from any voting device and check the ballot on the device with the official certification of the ballot arrangement for each precinct.

(5) Any paper ballots voted in a precinct shall be recounted as prescribed in 13-16-412.

(6) Write-in votes shall be recounted in the same manner as the count is made after the closing of the polls.

History: En. Sec. 182, Ch. 571, L. 1979; amd. Sec. 51, Ch. 575, L. 1981.

13-16-415. Recount totals. After a recount is completed, tally sheets shall be compared and the correctness of all reports of votes cast ascertained. The totals for each candidate or on each issue shall be compiled and checked for accuracy.

History: En. Sec. 183, Ch. 571, L. 1979.

13-16-416. Report of recount. (1) If the recount shows the votes for any candidate or on any ballot issue are more or less than the number shown upon the official returns, the secretary of the recount board shall prepare a corrected report which states the number of votes ascertained by the recount.

(2) The recount board shall direct the secretary to enter the result of the election as determined by the recount in the board records.

History: En. Sec. 184, Ch. 571, L. 1979.

Cross-References

Election Administrator secretary of Recount Board, 13-16-101.

13-16-417. Sealing ballots, machines, or devices. (1) When the recount in a precinct has been finished, each ballot shall again be sealed in the same package or envelope in the presence of the election administrator and the county recount board and shall be delivered to the election administrator for custody.

(2) All voting machines or devices from which seals have been removed shall be resealed in the presence of the election administrator and the recount board and shall be delivered to the election administrator for custody.

(3) All other materials used in the recount that are required to be sealed shall be resealed in the same manner and delivered to the election administrator for custody.

History: En. Sec. 200, Ch. 368, L. 1969; R.C.M. 1947, 23-4111; amd. Sec. 185, Ch. 571, L. 1979; Sec. 13-16-403, MCA 1979; redes. 13-16-417 by Code Commissioner, 1979.

13-16-418. Procedure after recount. (1) Immediately after the recount, the county recount board shall certify the result.

(2) At least two members of the board shall sign the certificate, and it shall be attested to under seal by the election administrator.

(3) The certificate shall set forth in substance the proceedings of the board and the appearance of any candidates or representatives. The certificate shall adequately designate each precinct recounted; the vote of each precinct according to the official canvass previously made; the nomination, position, or question involved; and the correct vote of each precinct as determined by the recount.

(4) When the certificate relates to a recount for a congressional office, a state or district office voted on in more than one county, a legislative office, or an office of judge of the district court or a ballot issue voted on in more than one county, the certificate shall be made in duplicate. One copy shall be transmitted immediately to the secretary of state by certified mail.

(5) (a) If the recount relates to a county, municipal, or district office voted for in only one county, other than that of a legislator or a judge of the district court, or a precinct office or a ballot issue voted on in only one county, the county recount board shall immediately recanvass the returns as corrected by the certificate showing the result of the recount and make a corrected abstract of the votes.

(b) If the corrected abstract shows no change in the result, no further action need be taken.

(c) If there is a change in the result, a new certificate of election or nomination shall be issued to each candidate found to be elected or nominated and the first certificate is void. The individual receiving the second certificate shall be elected or nominated to the office.

History: Ap. p. Sec. 206, Ch. 368, L. 1969; amd. Sec. 49, Ch. 365, L. 1977; Sec. 23-4117, R.C.M. 1947; Ap. p. Sec. 201, Ch. 368, L. 1969; Sec. 23-4112, R.C.M. 1947; R.C.M. 1947, 23-4112, 43-4117; amd. Sec. 186, Ch. 571, L. 1979; Sec. 13-16-404, MCA 1979; redes. 13-16-418 by Code Commissioner, 1979.

13-16-419. Recount by board of state canvassers. (1) When the secretary of state receives certificates from all county recount boards, he shall file them, fix a time and place, as soon as possible, for reconvening the board of state canvassers, and shall notify the members.

(2) The board of state canvassers shall recanvass the official returns on the office, nomination, position, or question, as corrected by the certificates, and make a new and corrected abstract of the votes cast.

(3) (a) If the corrected abstract shows no change in the results, no further action shall be taken.

(b) If there is a change in the results, a new certificate of election or nomination shall be issued in the same manner as the certificate of election or nomination was previously issued to each candidate elected or nominated.

History: En. Sec. 207, Ch. 368, L. 1969; R.C.M. 1947, 23-4118; Sec. 13-16-405, MCA 1979; redes. 13-16-419 by Code Commissioner, 1979; amd. Sec. 52, Ch. 575, L. 1981.

Cross-References

State Board of Canvassers, Title 13, ch. 15, part 5.

Issuance of certificate, 13-15-507.

13-16-420. Misplaced or missing ballots. If during a recount the county recount board discovers that ballots are misplaced or missing, it may petition the election administrator to inspect all sealed ballots within the county precincts to find the misplaced or missing ballots. Upon receiving the petition, the election administrator shall inspect the sealed ballots to find the misplaced or missing ballots. Upon completion of the recount, the misplaced or missing ballots must be placed in their proper precinct and sealed with the remaining ballots.

History: **En. Sec. 16, Ch. 591, L. 1991.**

Part 5

Tie Votes

13-16-501. Tie vote after recount. (1) If the recount shows a tie vote for any office and it cannot be determined who has been nominated by the primary election, the election officer with whom the candidates' nominating declarations or petitions were filed shall determine by lot which candidate shall be nominated. Written notice of the time and place of the drawing shall be given to each candidate involved.

(2) If the recount after a general election shows a tie vote and it cannot be determined who has been elected, the office or position shall be filled as provided by 13-16-502 through 13-16-506.

History: **En. Sec. 208, Ch. 368, L. 1969; R.C.M. 1947, 23-4119; amd. Sec. 187, Ch. 571, L. 1979.**

13-16-502. Tie vote in election for United States congress. If there is a tie vote for United States representative or senator, the secretary of state shall send a certified statement to the governor showing the votes cast and the governor shall order a special election.

History: **En. Sec. 209, Ch. 368, L. 1969; R.C.M. 1947, 23-4120(1); amd. Sec. 188, Ch. 571, L. 1979.**

Cross-References

"Special election" defined, 13-1-101.

Notice of special election, 13-1-108.

13-16-503. Tie vote in election for supreme court justice, district court judge, or state legislator. If there is a tie vote for justice of the supreme court, judge of a district court, or member of the legislature, the secretary of state shall send a certified statement to the governor showing the votes cast for each individual and the governor shall appoint one of those candidates to the office.

History: **En. Sec. 209, Ch. 368, L. 1969; R.C.M. 1947, 23-4120(2); amd. Sec. 189, Ch. 571, L. 1979.**

13-16-504. Tie vote in election for state executive officers. If there is a tie vote for governor and lieutenant governor, secretary of state, attorney general, state auditor, clerk of the supreme court, superintendent of public instruction, or any other state executive officer, the secretary of state shall transmit a certified copy of the statement to the legislature showing the votes cast for the two or more candidates having an equal and the highest number of votes. The legislature, at its next regular session, shall elect one of these candidates to fill the office by joint ballot of the two houses.

History: **En. Sec. 210, Ch. 368, L. 1969; amd. Sec. 50, Ch. 365, L. 1977; amd. Sec. 3, Ch. 468, L. 1977; R.C.M. 1947, 23-4121(1), (4); amd. Sec. 190, Ch. 571, L. 1979.**

Cross-References

Time of regular legislative session, 5-2-103.

13-16-505. Tie vote in election for county commissioner. If there is a tie vote for commissioner, the senior district judge shall appoint one of the candidates who tied to fill the office as in other cases of vacancy.

History: En. Sec. 210, Ch. 368, L. 1969; amd. Sec. 50, Ch. 365, L. 1977; amd. Sec. 3, Ch. 468, L. 1977; R.C.M. 1947, 23-4121(3); amd. Sec. 191, Ch. 571, L. 1979.

Cross-References

Vacancy on Board of County Commissioners, 7-4-2106.

13-16-506. Tie vote in election for other county officers. If there is a tie vote for clerk of the district court, county attorney, or any county officer except county commissioner, the commissioners shall appoint one of the candidates who tied to fill the office as in other cases of vacancy.

History: En. Sec. 210, Ch. 368, L. 1969; amd. Sec. 50, Ch. 365, L. 1977; amd. Sec. 3, Ch. 468, L. 1977; R.C.M. 1947, 23-4121(2); amd. Sec. 192, Ch. 571, L. 1979.

Cross-References

Vacancies of county offices, 7-4-2206.

13-16-507. Tie vote in election for officers of nonspecified political subdivision. If there is a tie vote for an officer of any political subdivision not specifically provided for in this part, the governing body of that jurisdiction shall appoint one of the candidates who tied to fill the office as in other cases of vacancy.

History: En. Sec. 193, Ch. 571, L. 1979.

Cross-References

Vacancies of offices of political subdivisions generally, Title 7, ch. 4, part 22.

CHAPTER 17

VOTING MACHINES

Part 1 — General Provisions

13-17-101. Secretary of state to approve voting machines and devices.
13-17-102. Use of qualified technicians and advisors.
13-17-103. Required specifications for equipment.
13-17-104. Providing voting machines or devices — payment.
13-17-105. Experimental use of machines or devices.
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Part 2 — Preparation For Use of Machines

13-17-201. Election administrator to instruct election judges.
13-17-202. Repealed.
13-17-203. Publication of information concerning machines or devices.
13-17-204. Voting machines or devices to be exhibited.
13-17-205. Repealed.
13-17-206. Arrangement of machine ballot.
13-17-207. Repealed.

Part 3 — Voting Procedure

13-17-301. Placement of equipment — time for use.
13-17-302. Repealed.
13-17-303. Repealed.

13-17-304. Repealed.
13-17-305. Request to use paper ballots.
13-17-306. Use of separate paper ballots for voting on certain candidates or issues.
13-17-307. Repealed.

Part 4 — Vote Count
(Repealed. Sec. 407, Ch. 571, L. 1979)

Chapter Cross-References

Definitions applicable to this chapter, 13-1-101.

Criminal provisions relating to voting machines, 13-35-205, 13-35-206.

Use of voting machines in school elections, 20-20-421.

Part 1
General Provisions

13-17-101. Secretary of state to approve voting machines and devices. (1) Before any voting machine or device can be used for any election in this state, the secretary of state shall:

(a) examine the machine or device to determine if it complies with the requirements of this chapter;

(b) within 30 days after examining a machine or device, file a report of the examination in his office;

(c) include in the report the reasons for approval or disapproval of the use of the machine or device and his opinion of the economic and procedural impact of the use of the machine or device by the various classes of counties of this state; and

(d) within 5 days after filing the report, transmit to the election administrator of each county a copy of the report.

(2) Voting machines and devices may not be used unless approved by the secretary of state 60 days or more prior to the election at which they will be used.

History: En. Sec. 142, Ch. 368, L. 1969; amd. Sec. 40, Ch. 365, L. 1977; R.C.M. 1947, 23-3801(1), (2); amd. Sec. 194, Ch. 571, L. 1979.

Cross-References

Definition of "voting machine or device", 13-1-101.

13-17-102. Use of qualified technicians and advisors. (1) The secretary of state may employ and compensate qualified technicians and advisors who are electors of this state to assist him in duties required by 13-17-101. Advisors who are public officers or employees shall serve without additional compensation other than expenses of attending the examination if the examination takes place during their regular working hours.

(2) The person or company submitting a machine or device for examination shall pay the compensation and expenses of technicians and advisors connected with the examination to the secretary of state for deposit in the state general fund. The secretary of state and the person or company shall reach agreement on the number of technicians and advisors to be compensated before the examination is held.

History: En. Sec. 142, Ch. 368, L. 1969; amd. Sec. 40, Ch. 365, L. 1977; R.C.M. 1947, 23-3801(3), (4); amd. Sec. 195, Ch. 571, L. 1979.

13-17-103. Required specifications for equipment. A voting machine or device may not be approved unless:

(1) an elector can vote in secrecy;

(2) an elector is prevented from voting for any candidate or upon any ballot issue more than once and is also prevented from voting on any office or ballot issue for which he is not entitled to vote;

(3) an elector can secretly select the party for which he wishes to vote in a primary election and the machine or device will count only votes for the candidates of that party by the elector in the primary election;

(4) an elector can vote a split ticket in a general election if he desires;

(5) every valid vote cast is registered and recorded;

(6) the machine or device is constructed so that it cannot be tampered with for a fraudulent purpose and is also constructed so that during the progress of the voting no individual can see or know the number of votes registered for any candidate or on any ballot issue;

(7) it allows write-in voting; and

(8) a guarantee to provide training and assistance to election officials is included in each contract for purchase of the machine or device.

History: En. Sec. 143, Ch. 368, L. 1969; R.C.M. 1947, 23-3802(1), (3); amd. Sec. 196, Ch. 571, L. 1979; amd. Sec. 33, Ch. 370, L. 1987.

Cross-References

Secret ballot required, Art. IV, sec. 1, Mont. Const.

13-17-104. Providing voting machines or devices — payment. (1) The county governing body may provide approved voting machines or devices as practicable.

(2) Funds for voting machines or devices may be provided by the same methods available for other capital equipment purchases by the county.

(3) The governing body of a county may put the question of purchasing voting machines or devices or the question of which type of voting machine or device to purchase to the registered electors of the county by the same method that any other question is referred to the electors.

History: En. Sec. 144, Ch. 368, L. 1969; R.C.M. 1947, 23-3803; amd. Sec. 197, Ch. 571, L. 1979.

Cross-References

Referral of question to voters, 7-5-132.

13-17-105. Experimental use of machines or devices. The governing body of a county may provide for the experimental use at an election of a voting machine or device that has been approved by the secretary of state in one or more precincts without a formal adoption or purchase of the machine or device. Its use at the election is valid for all purposes as if the equipment had been formally adopted or purchased.

History: En. Sec. 158, Ch. 368, L. 1969; R.C.M. 1947, 23-3817; amd. Sec. 198, Ch. 571, L. 1979.

13-17-106. General election laws to apply. All laws applicable to elections where voting is not done by machine or device and all penalties prescribed for violations of those laws apply to elections and precincts where voting machines or devices are used if they are not in conflict with the provisions of this chapter.

History: **En. Sec. 163, Ch. 368, L. 1969; amd. Sec. 44, Ch. 334, L. 1977; amd. Sec. 42, Ch. 365, L. 1977; R.C.M. 1947, 23-3822; amd. Sec. 199, Ch. 571, L. 1979.**

13-17-107. Secretary of state to prescribe rules. (1) The secretary of state may prescribe rules for the submission of voting machines and devices for examination and additional requirements for approval of machines and devices.

(2) The secretary of state shall prescribe rules for the complete procedures necessary to use each type of voting machine or device now approved for use in this state and for each type of machine or device approved for use under the provisions of this chapter.

History: **En. Sec. 200, Ch. 571, L. 1979.**

Part 2

Preparation For Use of Machines

13-17-201. Election administrator to instruct election judges. (1) Before each election, the election administrator shall instruct all election judges in the use of the machines or devices. He shall give to each election judge who has received instruction and is fully qualified to conduct an election with the machine a certificate to that effect.

(2) A chief election judge may not serve in a precinct where voting machines or devices are used unless he has received instruction, is fully qualified to perform duties in connection with the machine or device, and has received a certificate to that effect from the election administrator.

History: **En. Sec. 148, Ch. 368, L. 1969; amd. Sec. 41, Ch. 365, L. 1977; R.C.M. 1947, 23-3807; amd. Sec. 201, Ch. 571, L. 1979.**

13-17-202. Repealed. Sec. 407, Ch. 571, L. 1979.

History: **En. Sec. 151, Ch. 368, L. 1969; R.C.M. 1947, 23-3810.**

13-17-203. Publication of information concerning machines or devices. Not more than 10 or less than 3 days before an election at which voting machines or devices will be used, the election administrator shall publish on radio or television as provided in 2-3-105 through 2-3-107 or in a newspaper of general circulation in the county:

(1) a diagram showing the voting machine or device and ballot arrangement (in newspaper only);

(2) a statement of the locations where voting machines or devices are on public exhibition;

(3) illustrated instructions on how to vote.

History: **En. Sec. 149, Ch. 368, L. 1969; R.C.M. 1947, 23-3808; amd. Sec. 202, Ch. 571, L. 1979.**

13-17-204. Voting machines or devices to be exhibited. A voting machine or device shall be on exhibition in the office of the election administrator of counties where such equipment is used and may be exhibited at other locations. The election administrator shall demonstrate the voting machine or device to any inquiring elector.

History: **En. Sec. 150, Ch. 368, L. 1969; R.C.M. 1947, 23-3809; amd. Sec. 203, Ch. 571, L. 1979.**

13-17-205. Repealed. Sec. 407, Ch. 571, L. 1979.

History: En. Sec. 145, Ch. 368, L. 1969; amd. Sec. 1, Ch. 116, L. 1977; R.C.M. 1947, 23-3804(1), (7).

13-17-206. Arrangement of machine ballot. The order and arrangement of ballots to be used with voting machines or devices shall be the same as paper ballots insofar as possible and shall be prescribed by the secretary of state before each election.

History: En. Sec. 145, Ch. 368, L. 1969; amd. Sec. 1, Ch. 116, L. 1977; R.C.M. 1947, 23-3804; amd. Sec. 204, Ch. 571, L. 1979.

Cross-References

Order and arrangement of paper ballots, Title 13, ch. 12, part 2.

13-17-207. Repealed. Sec. 407, Ch. 571, L. 1979.

History: En. Sec. 152, Ch. 368, L. 1969; R.C.M. 1947, 23-3811.

Part 3

Voting Procedure

13-17-301. Placement of equipment — time for use. (1) The exterior of the voting machines or devices or the booths in which they are placed and every part of the polling place shall be in plain view of the election judges.

(2) An elector may not remain within the voting machine or device booth or compartment longer than is reasonably necessary to vote. If he refuses to leave, the election judges shall remove him.

History: En. Sec. 147, Ch. 368, L. 1969; R.C.M. 1947, 23-3806(1); amd. Sec. 205, Ch. 571, L. 1979.

Cross-References

Coercion or undue influence of voters, 13-35-218.

13-17-302. Repealed. Sec. 407, Ch. 571, L. 1979.

History: En. Sec. 147, Ch. 368, L. 1969; R.C.M. 1947, 23-3806(2).

13-17-303. Repealed. Sec. 407, Ch. 571, L. 1979.

History: En. Sec. 153, Ch. 368, L. 1969; amd. Sec. 43, Ch. 334, L. 1977; R.C.M. 1947, 23-3812.

13-17-304. Repealed. Sec. 407, Ch. 571, L. 1979.

History: En. Sec. 159, Ch. 368, L. 1969; R.C.M. 1947, 23-3818(1).

13-17-305. Request to use paper ballots. (1) (a) Where voting machines are used, an elector may request to vote by paper ballot instead of using the machine. The election judges shall provide the elector with a paper ballot when requested.

(b) Where voting devices are used, the election administrator, with approval of the governing body of the county if the election administrator is an appointed official, may provide paper ballots if the election administrator believes such ballots are necessary. However, if more than 5% of the electors voting in the last preceding general election voted using paper ballots, the election administrator shall provide paper ballots. The printing of paper ballots provided pursuant to this subsection is an allowable election cost under the provisions of 13-1-302.

(2) Paper ballots shall be cast and counted by the election judges in the manner provided by law.

(3) For the purposes of this section, "voting machine" means a mechanical apparatus which is used for voting by using levers which provide a tabulating system within the machine.

History: En. Sec. 159, Ch. 368, L. 1969; R.C.M. 1947, 23-3818(2); amd. Sec. 206, Ch. 571, L. 1979; amd. Sec. 1, Ch. 588, L. 1985.

Cross-References

Counting of ballots, Title 13, ch. 15.

13-17-306. Use of separate paper ballots for voting on certain candidates or issues. Whenever a voting machine or device does not allow proper lockout or does not allow adequate space for the candidates for all offices or for all ballot issues, separate paper ballots may be used for some or all offices or ballot issues if written authorization is given to the election administrator by the secretary of state.

History: En. Sec. 160, Ch. 368, L. 1969; R.C.M. 1947, 23-3819; amd. Sec. 207, Ch. 571, L. 1979.

13-17-307. Repealed. Sec. 407, Ch. 571, L. 1979.

History: En. Sec. 146, Ch. 368, L. 1969; R.C.M. 1947, 23-3805.

Part 4

Vote Count

(Repealed. Sec. 407, Ch. 571, L. 1979)

Part Compiler's Comments

Histories of Repealed Sections:

13-17-401. En. Sec. 154, Ch. 368, L. 1969; R.C.M. 1947, 23-3813.

13-17-402. En. Sec. 155, Ch. 368, L. 1969; R.C.M. 1947, 23-3814.

13-17-403. En. Sec. 156, Ch. 368, L. 1969; R.C.M. 1947, 23-3815.

13-17-404. En. Sec. 157, Ch. 368, L. 1969; R.C.M. 1947, 23-3816.

CHAPTER 18

ELECTRONIC VOTING SYSTEMS

(Repealed. Sec. 407, Ch. 571, L. 1979)

Chapter Compiler's Comments

Histories of Repealed Sections:

13-18-101. En. Sec. 164, Ch. 368, L. 1969; R.C.M. 1947, 23-3901.

13-18-102. En. Sec. 165, Ch. 368, L. 1969; R.C.M. 1947, 23-3902.

13-18-103. En. Sec. 166, Ch. 368, L. 1969; R.C.M. 1947, 23-3903(1), (2).

13-18-104. En. Sec. 166, Ch. 368, L. 1969; R.C.M. 1947, 23-3903(4).

13-18-105. En. Sec. 169, Ch. 368, L. 1969; R.C.M. 1947, 23-3906.

13-18-106. En. Sec. 170, Ch. 368, L. 1969; R.C.M. 1947, 23-3907.

13-18-201. En. Sec. 167, Ch. 368, L. 1969; R.C.M. 1947, 23-3904(part).

13-18-202. En. Sec. 167, Ch. 368, L. 1969; R.C.M. 1947, 23-3904(1).

13-18-203. En. Sec. 167, Ch. 368, L. 1969; R.C.M. 1947, 23-3904(2).

13-18-204. En. Sec. 167, Ch. 368, L. 1969; R.C.M. 1947, 23-3904(3).

13-18-205. En. Sec. 167, Ch. 368, L. 1969; R.C.M. 1947, 23-3904(4).

13-18-206. En. Sec. 167, Ch. 368, L. 1969; R.C.M. 1947, 23-3904(5).

13-18-207. En. Sec. 166, Ch. 368, L. 1969; R.C.M. 1947, 23-3903(3).

13-18-208. En. Sec. 166, Ch. 368, L. 1969; R.C.M. 1947, 23-3903(5).

13-18-209. En. Sec. 168, Ch. 368, L. 1969; amd. Sec. 43, Ch. 365, L. 1977; R.C.M. 1947, 23-3905(1), (2).

13-18-210. (1), (3)En. Sec. 168, Ch. 368, L. 1969; amd. Sec. 43, Ch. 365, L. 1977; Sec. 23-3905, R.C.M. 1947; (2)En. Sec. 167, Ch. 368,

L. 1969; Sec. 23-3904, R.C.M. 1947; R.C.M. 1947, 23-3904(part), 23-3905(3), (4).

CHAPTER 19

MAIL BALLOT ELECTIONS

Part 1 — General Provisions

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Part 2 — Preelection Procedure

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13-19-302. Proportional voting.
13-19-303. Voting by elector when absent from place of residence during conduct of election.
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13-19-306. Returning marked ballots — when — where.
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13-19-309. Disposition of ballots returned by mail.
13-19-310. Signature verification — procedures.
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Part 1
General Provisions

13-19-101. Statement of purpose. The purpose of this chapter is to provide the option of conducting certain specified elections using a procedure called a "mail ballot election" and to provide the procedures therefor. The provisions of this chapter recognize that sound public policy concerning the conduct of elections often requires the balancing of various elements of the public interest that are sometimes in conflict. Among these factors are the public's interest in fair and accurate elections, the election of those who will govern or represent, and cost-effective administration of all functions of government, including the conduct of elections. The provisions of this chapter further recognize that when these and other factors are balanced, the conduct of elections by mail ballot is potentially the most desirable of the available options in certain circumstances.

History: En. Sec. 1, Ch. 196, L. 1985.

13-19-102. Definitions. As used in this chapter, the following definitions apply:

(1) "Election day" is the date established by law on which a particular election would be held if that election were being conducted by means other than a mail ballot election.

(2) "Mail ballot election" means any election that involves either candidates or ballot issues and is conducted in compliance with the procedure specified in 13-19-106.

(3) "Political subdivision" means a political subdivision of the state, including a school district.

(4) "Return/verification envelope" means an envelope that contains a secrecy envelope and ballot and which is designed to:

(a) allow election officials, upon examination of the outside of the envelope, to determine that the ballot is being submitted by someone who is in fact a qualified elector and who has not already voted; and

(b) allow it to be used in the United States mail.

(5) "Secrecy envelope" means an envelope used to contain the elector's ballot and that is designed to conceal the elector's vote and to prevent that elector's ballot from being distinguished from the ballots of other electors.

History: En. Sec. 2, Ch. 196, L. 1985; amd. Sec. 1, Ch. 10, L. 1987.

13-19-103. General election laws to apply. All laws applicable to elections when voting is not done by mail ballot and all penalties prescribed for violation of those laws apply to elections conducted by mail ballot to the extent they do not specifically conflict with the provisions of this chapter or are not otherwise provided for by this chapter.

History: En. Sec. 5, Ch. 196, L. 1985.

13-19-104. Mail ballot elections not mandatory — when authorized — when prohibited. (1) Conducting elections by mail ballot is only one option available to local officials and nothing in this chapter mandates that the procedure be used.

(2) The following elections may be conducted by mail ballot:

(a) an election in a political subdivision required to hold annual elections under 13-1-104(3);

(b) an election in a city of the third class, as defined in 7-1-4111(3), if all of the candidates whose names will appear on the ballot are candidates for offices to be elected without party designation;

(c) an election in a town as defined in 7-1-4111(4);

(d) an election conducted under 7-13-2236 in an unincorporated area; and

(e) a special election called by a local government unit for the sole purpose of submitting one or more ballot issues to its qualified electors if such special election is not held in conjunction with a statutorily scheduled election.

(3) The following elections may not be conducted by mail ballot:

(a) an election held for one of the purposes or at the time provided in 13-1-104(1) and 13-1-107(1);

(b) an election held for one of the purposes or at the time provided in 13-1-104(2) and 13-1-107(2), except as specifically allowed by subsections (2)(b) and (2)(c) of this section;

(c) an election being held under the provisions of the Montana Recall Act, in Title 2, chapter 16, part 6;

(d) an election involving candidates for public office, except as specifically allowed by subsections (2)(a) through (2)(c) of this section; and

(e) a special election being held in conjunction with a statutorily scheduled election.

History: En. Sec. 4, Ch. 196, L. 1985; amd. Sec. 2, Ch. 10, L. 1987.

13-19-105. Role of secretary of state. In addition to other powers and duties conveyed by law, the secretary of state, with advice from election administrators, shall:

(1) prescribe the form of materials to be used in the conduct of mail ballot elections;

(2) review written plans for the conduct of mail ballot elections as provided in 13-19-205; and

(3) adopt rules consistent with this chapter to:

(a) establish and maintain uniformity in the conduct of mail ballot elections; and

(b) establish procedures for the conduct of mail ballot elections that:

(i) prevent fraud;

(ii) ensure the accurate handling and canvassing of mail ballots; and

(iii) ensure that the secrecy of voted ballots is maintained.

History: En. Sec. 6, Ch. 196, L. 1985.

13-19-106. General requirements for mail ballot election. A mail ballot election must be conducted substantially as follows:

(1) Official ballots must be prepared and all other initial procedures followed as otherwise provided by law, except that mail ballots are not required to have stubs.

(2) An official ballot must be mailed to every qualified elector of the political subdivision conducting the election.

(3) The elector shall mark the ballot at home and place it in a secrecy envelope.

(4) The elector shall then place the secrecy envelope containing his ballot in a return/verification envelope and shall return it by mailing it or delivering it in person to a place of deposit designated by the election administrator so that it is received prior to a specified time on election day.

(5) Once returned, election officials shall first qualify the submitted ballot by examining the return/verification envelope to determine whether it is submitted by a qualified elector who has not previously voted.

(6) If the ballot so qualifies and is otherwise valid, officials shall then open the return/verification envelope and remove the secrecy envelope, which is then voted by depositing it unopened in an official ballot box.

(7) After the close of polls on election day, voted ballots must be counted and canvassed as otherwise provided by law.

History: En. Sec. 3, Ch. 196, L. 1985; amd. Sec. 17, Ch. 591, L. 1991.

Part 2
Preelection Procedure

13-19-201. How election initiated. A proposal to conduct an election under this chapter may be initiated by either the election administrator or the appropriate governing body as provided in 13-19-202 through 13-19-204.

History: En. Sec. 7, Ch. 196, L. 1985.

13-19-202. Initiation by governing body. (1) A political subdivision may, by resolution of the governing body addressed to the election administrator, request that a particular election be conducted under the provisions of this chapter.

(2) No later than 70 days before election day, the governing body shall transmit its request to the election administrator, who shall determine whether it is economically and administratively feasible to conduct the requested election by mail ballot.

(3) Except as provided in 13-19-204, the decision to conduct an election under the provisions of this chapter is within the sole discretion of the election administrator.

(4) Within 5 days after receiving a request, the election administrator shall respond in writing, stating that the request is either granted or denied for reasons specified. If granted, the election administrator shall prepare a plan as provided in 13-19-205.

History: En. Sec. 8, Ch. 196, L. 1985.

13-19-203. Initiation by election administrator. (1) Even if no request has been received from the governing body concerned, the election administrator may conduct any election authorized by 13-19-104 under this chapter if, in his discretion, that would be the most economically and administratively feasible way of conducting the election in question.

(2) If he decides to conduct an election pursuant to subsection (1), the election administrator shall prepare a written plan as provided in 13-19-205 and forward a copy to the governing body concerned, together with a written statement informing it of his decision to conduct the election by mail ballot and the reasons therefor and the right of the governing body to object under 13-19-204.

History: En. Sec. 9, Ch. 196, L. 1985.

13-19-204. Objection of political subdivision. (1) A political subdivision may, by resolution of the governing body, object to the conduct of one of its elections under this chapter. The resolution must include a statement of the reasons for the objection.

(2) If such a resolution is filed with the election administrator no later than 55 days prior to election day, the election may not be conducted under this chapter.

History: En. Sec. 10, Ch. 196, L. 1985.

13-19-205. Written plan for conduct of election — amendments — approval procedures. (1) The election administrator shall prepare a written plan, including a timetable, for the conduct of the election and shall submit it to the secretary of state at least 60 days prior to the date set for the election.

(2) The plan may be amended by the election administrator any time prior to the 35th day before election day by notifying the secretary of state in writing of any changes.

(3) Within 5 days of receiving the plan and as soon as possible after receiving any amendments, the secretary of state shall approve, disapprove, or recommend changes to the plan or amendments.

(4) When the written plan has been approved, the election administrator shall proceed to conduct the election according to the approved plan.

History: En. Sec. 11, Ch. 196, L. 1985.

13-19-206. Distributing materials to electors — procedure. For each election conducted under this chapter, the election administrator shall:

(1) mail a single packet to every qualified elector of the political subdivision conducting the election;

(2) ensure that each packet contains only one each of the following:

(a) an official ballot, except that the election administrator may include separate ballots for each type of election being held concurrently;

(b) a secrecy envelope;

(c) a return/verification envelope; and

(d) complete written instructions for voting and returning ballots; and

(3) ensure that each packet is:

(a) clearly marked on its face with words stating the appropriate postal regulation language to prohibit forwarding of the packet;

(b) addressed to a single individual elector at the most current address available from the official registration records; and

(c) deposited in the United States mail with sufficient prepaid postage for it to be delivered to the elector's address.

History: En. Sec. 13, Ch. 196, L. 1985; amd. Sec. 18, Ch. 591, L. 1991.

13-19-207. When materials to be mailed. For any election conducted by mail, ballots must be mailed no sooner than the 25th day and no later than the 15th day before election day. All ballots must be mailed the same day.

History: En. Sec. 14, Ch. 196, L. 1985.

Part 3

Election Procedure

13-19-301. Voting mail ballots. (1) Upon receipt of his ballot, the elector may vote by:

(a) marking the ballot in the manner specified;

(b) placing the marked ballot in the secrecy envelope, free of any identifying marks;

(c) placing the secrecy envelope containing a single ballot in the return/verification envelope;

(d) executing the affidavit printed on the return/verification envelope; and

(e) returning the return/verification envelope with the secrecy envelope containing the ballot enclosed, as provided in 13-19-306.

(2) For the purpose of this chapter, an official ballot is voted when, after the requirements of 13-19-310 and 13-19-311 have been satisfied, the re-

turn/verification envelope has been opened by election officials and the secrecy envelope containing the ballot has been deposited in the official ballot box.

History: **En. Sec. 16, Ch. 196, L. 1985.**

13-19-302. Proportional voting. The election administrator shall provide a method for proportional voting in his written plan for an election conducted under this chapter that requires votes to be cast in proportion to ownership or any factor other than one vote per person.

History: **En. Sec. 12, Ch. 196, L. 1985.**

13-19-303. Voting by elector when absent from place of residence during conduct of election. (1) A qualified elector who will be absent from the county during the time the election is being conducted may:

(a) vote in person in the election administrator's office as soon as ballots are available and until noon the day before the ballots are scheduled to be mailed; or

(b) make a written request, signed by the applicant and addressed to the election administrator, that the ballot be mailed to an address other than that which appears on the registration card. Written requests must be accepted until noon the day before the ballots are scheduled to be mailed.

(2) Ballots mailed to electors pursuant to this section must be mailed the same day that all other ballots are mailed.

History: **En. Sec. 15, Ch. 196, L. 1985.**

13-19-304. Voting by nonregistered electors. (1) For any election being conducted under this chapter by a political subdivision that allows individuals to vote who are not registered electors, such an individual may vote by appearing in person at the election administrator's office and demonstrating that he possesses the qualifications which entitle him to vote.

(2) An individual complying with subsection (1) before official ballots are available may leave a card with the election administrator containing his signature and the address to which his ballot is to be mailed. The signature provided must then be used for verification when the mail ballot is returned.

(3) An individual complying with subsection (1) after official ballots are available and before the close of the polls on election day must be permitted to vote at that time.

History: **En. Sec. 23, Ch. 196, L. 1985.**

13-19-305. Replacement ballots — procedures. (1) An elector may obtain a replacement ballot as provided in this section if his ballot is destroyed, spoiled, lost, or not received by the elector.

(2) An elector seeking a replacement ballot shall sign a sworn statement stating that the ballot was either destroyed, spoiled, lost, or not received and shall present the statement to the election administrator no later than 8 p.m. on election day.

(3) Upon receiving the sworn statement, the election administrator shall issue a replacement ballot to the elector. Each spoiled ballot must be returned before a new one may be issued.

(4) The election administrator shall designate his office or a central location in the political subdivision in which the election is conducted as the single location for obtaining a replacement ballot.

(5) A replacement ballot may also be issued pursuant to 13-19-313.

(6) The election administrator shall keep a record of each replacement ballot issued. If he later determines that any elector to whom a replacement ballot has been issued has attempted to vote more than once, he shall immediately notify the county attorney and the secretary of state of each instance.

History: En. Sec. 17, Ch. 196, L. 1985.

13-19-306. Returning marked ballots — when — where. (1) After complying with 13-19-301, an elector or his designee may return his ballot on or before election day by either:

(a) depositing the return/verification envelope in the United States mail, with sufficient postage affixed; or

(b) returning it to any place of deposit designated by the election administrator pursuant to 13-19-307.

(2) In order to have his ballot counted, each elector must return it in such a manner that it is received prior to 8 p.m. on election day.

History: En. Sec. 18, Ch. 196, L. 1985; amd. Sec. 19, Ch. 591, L. 1991.

13-19-307. Places of deposit. (1) The election administrator shall designate his office and may designate one or more places in the political subdivision in which the election is being conducted as places of deposit where ballots may be returned in person by the elector.

(2) Prior to election day, ballots may be returned to any designated place of deposit only during regular business hours.

(3) On election day, each location designated as a place of deposit must be open as provided in 13-1-106, and ballots may be returned during those hours.

(4) The election administrator may designate certain locations as election day places of deposit, and any location so designated shall function as a place of deposit only on election day.

(5) The election administrator shall provide each designated place of deposit with an official ballot transport box secured as provided by law.

History: En. Sec. 19, Ch. 196, L. 1985.

13-19-308. Disposition of ballots returned in person. Ballots returned by the elector in person must be processed as follows:

(1) If returned to the election administrator's office directly, the ballot must be processed in the same manner provided for ballots returned by mail except that, while the elector is present, officials shall:

(a) verify the signature pursuant to 13-19-310;

(b) resolve any questions as to the validity of the ballot; and

(c) deposit the unopened secrecy envelope containing the ballot in the official ballot box.

(2) If returned to a place of deposit other than the election administrator's office, the election official on location shall:

(a) keep a log of the names of all electors from whom he receives ballots and the names of the people who deliver the ballots;

(b) deposit the unopened return/verification envelope in the sealed ballot transport box provided for that purpose; and

(c) securely retain all ballots until they are transported to the election administrator's office. The transport boxes must then be opened and the ballots disposed of in the same manner provided for ballots returned by mail.

History: En. Sec. 20, Ch. 196, L. 1985; amd. Sec. 20, Ch. 591, L. 1991.

13-19-309. Disposition of ballots returned by mail. (1) Upon receipt of each return/verification envelope, election officials shall:

(a) compare the name with the official register to determine that the person has not previously voted;

(b) verify the signature on the affidavit in the manner provided by 13-19-310;

(c) open the return/verification envelope and retain it as an official record;

(d) remove and examine the secrecy envelope to determine if the ballot is valid pursuant to 13-19-311;

(e) if the ballot is valid, record the name of the elector in the official register as having voted; and

(f) deposit the unopened secrecy envelope containing the ballot in the official ballot box.

(2) If at any point there is a question concerning a particular ballot, the election administrator may not deposit the ballot in question. The election administrator shall retain all materials relating to the questioned ballot until the question is resolved satisfactorily or the question is determined as provided in 13-19-314.

History: En. Sec. 21, Ch. 196, L. 1985.

13-19-310. Signature verification — procedures. (1) The election administrator shall verify the signature of each elector by comparing the affidavit printed on the return/verification envelope to the signature on that elector's registration card or signature card provided under 13-19-304.

(2) If the election administrator is convinced that the individual signing the affidavit is the same as the one whose name appears on the registration card, he shall proceed to validate the ballot.

(3) If the election administrator is not convinced that the individual signing the return/verification envelope is the same as the one whose name appears on the registration card, he may not validate the ballot but instead shall:

(a) give notice to the elector as provided in 13-19-313; and

(b) if the discrepancy is not rectified to the election administrator's satisfaction, present the unopened envelope and the registration card to the canvassing board for a determination.

History: En. Sec. 22, Ch. 196, L. 1985.

13-19-311. Valid ballots — requirements. (1) Only valid ballots may be counted in an election conducted under this chapter.

(2) For the purpose of this chapter, a ballot is valid only if:

(a) it is sealed in the secrecy envelope and returned in the return/verification envelope;

(b) the elector's signature on the affidavit on the return/verification envelope is verified pursuant to 13-19-310; and

(c) it is received before 8 p.m. on election day.

(3) A ballot is invalid if:

(a) more than one ballot is enclosed in a single return/verification or secrecy envelope unless there are multiple elections being held at the same time and there is only one ballot for each election in the envelope; or

(b) any identifying marks are placed on the ballot by the elector.

History: **En. Sec. 24, Ch. 196, L. 1985; amd. Sec. 21, Ch. 591, L. 1991.**

13-19-312. Procedure at close of voting. (1) After the close of voting on election day, election officials shall:

(a) open the official ballot boxes;

(b) open each secrecy envelope, removing the ballot; and

(c) proceed to count the votes as otherwise provided by law.

(2) On election day, the election administrator may begin the procedures described in subsection (1) before the polls close if he complies with the procedures described in 13-15-103.

History: **En. Sec. 27, Ch. 196, L. 1985; amd. Sec. 22, Ch. 591, L. 1991.**

13-19-313. Notice to elector — opportunity to resolve questions. (1) As soon as possible after receipt of an elector's return/verification envelope, the election administrator shall give notice to the elector, either by telephone or by first-class mail, if the election administrator:

(a) is unable to verify the elector's signature under 13-19-310; or

(b) has discovered a procedural mistake made by the elector that would invalidate his ballot under 13-19-311.

(2) The election administrator shall inform the elector that he may appear in person at the election administrator's office prior to 8 p.m. on election day and verify the signature or correct the mistake.

(3) Any elector so appearing must be permitted to:

(a) verify his signature, after proof of identification, by affirming that the signature is in fact his or completing a new registration card containing his current signature;

(b) correct any minor mistake if the correction would render the ballot valid; or

(c) if necessary, request and receive a replacement ballot and vote it at that time.

History: **En. Sec. 25, Ch. 196, L. 1985.**

13-19-314. Resolving issues in question. Any questions concerning the validity of a ballot or signature must be resolved in the following manner:

(1) If the election administrator is unable to resolve the issue to his satisfaction, he shall give notice to the elector as provided in 13-19-313.

(2) If the elector fails to appear or, if even after such an appearance, the issue is still not resolved to the election administrator's satisfaction, the election administrator shall present the issue for a determination to the board of judges appointed to count the ballots.

(3) If the counting board is unable to resolve the issue to its satisfaction, it may not count the ballot in question. Instead, the election administrator shall present the issue to the board of canvassers for a determination of the issue.

(4) If the board of canvassers is unable to resolve the issue, the ballot must not be counted.

History: **En. Sec. 26, Ch. 196, L. 1985.**

CHAPTERS 20 AND 21

RESERVED

CHAPTER 22

YOUTH VOTING ACT

Part 1 — General Provisions

13-22-101. Short title.
13-22-102. Purpose and intent.
13-22-103. Youth voting program established — program coordination — school participation.
13-22-104. Program development.
13-22-105. Responsibilities of participating schools.
13-22-106. Polling place procedures.
13-22-107. Funding.
13-22-108. Reports.

Part 1

General Provisions

13-22-101. Short title. This chapter may be cited as the "Youth Voting Act".

History: En. Sec. 1, Ch. 348, L. 1991.

13-22-102. Purpose and intent. The intent of the legislature is to establish a nonpartisan youth voting program that will:

(1) provide the youth of Montana with practical experience in the democratic process;

(2) increase the likelihood that Montana's youth will participate in the process as adult voters and encourage the participation of more parents in elections;

(3) not benefit any elected official, candidate for elective office, political party, campaign for or against any ballot issue, or any measure attempting to qualify for placement on a ballot; and

(4) be entirely funded through private donations.

History: En. Sec. 2, Ch. 348, L. 1991.

13-22-103. Youth voting program established — program coordination — school participation. (1) There is a youth voting program for minors to provide young Montanans direct experience in the voting process.

(2) The secretary of state, in consultation with the superintendent of public instruction, shall solicit county election administrators and schools throughout the state to participate in the youth voting program. The secretary of state and the superintendent of public instruction shall confer with the participating county election administrators and county superintendents of schools and, from among interested schools, shall facilitate the participation of as many schools in the program as available funds and other circumstances

allow. A designated school may, at any time, decline to participate by notifying the secretary of state in writing.

History: En. Sec. 3, Ch. 348, L. 1991.

13-22-104. Program development. (1) The secretary of state and the superintendent of public instruction shall compile a program and establish a process whereby:

(a) students are instructed on the electoral process, the importance of voting, and how to mark and cast a ballot;

(b) students are educated about current issues in a manner appropriate for each grade level involved;

(c) students cast facsimile or mock ballots while accompanying their parents to polling places during regular elections; and

(d) ballots cast by students at elections are counted and the results are made available to all participating schools.

(2) The program must be presented to participating schools in a nonpartisan, nonbiased, and informative manner.

History: En. Sec. 4, Ch. 348, L. 1991.

13-22-105. Responsibilities of participating schools. Participating schools shall, in a timely manner, provide to students and their parents or guardians instruction and guidance on how to participate in the program, youth voter registration procedures and deadlines, a list of candidates and issues, and polling and balloting procedures.

History: En. Sec. 5, Ch. 348, L. 1991.

13-22-106. Polling place procedures. (1) The secretary of state and the superintendent of public instruction shall work with county election officials to provide that:

(a) facsimile or mock ballots are distributed to polling places in counties with participating schools;

(b) participating students accompanied by a parent or eligible voter are allowed to cast ballots in the youth election; and

(c) student ballots are counted and the results are announced to the participating schools.

(2) The provisions of this section must be carried out in a manner that will not interfere with the normal voting process or established polling place procedures.

History: En. Sec. 6, Ch. 348, L. 1991.

13-22-107. Funding. (1) Public money may not be used to support or fund the youth voting program established in this chapter.

(2) A nonprofit corporation may be formed subject to the provisions of Title 35, chapter 2, to solicit donations from private sources. Money solicited under this subsection must be used only for the youth voting program.

History: En. Sec. 7, Ch. 348, L. 1991.

13-22-108. Reports. (1) Each biennium, the secretary of state shall provide, upon request, a report to the legislature outlining the program's effectiveness in achieving its objectives.

(2) Participating schools and agencies shall provide to the secretary of state information regarding the youth voting program for the secretary of state's report to the legislature.

History: **En. Sec. 8, Ch. 348, L. 1991.**

CHAPTERS 23 AND 24

RESERVED

CHAPTER 25

ELECTIONS FOR FEDERAL OFFICE

Part 1 — Presidential Elections

13-25-101. Nomination of electors — ballot.
13-25-102. Election of electors.
13-25-103. Returns — lists of electors elected.
13-25-104. Meeting and voting of electors.
13-25-105. Lists of persons voted for.
13-25-106. Compensation of electors.
13-25-107. Vacancy in office of elector.

Part 2 — Congressional Elections

13-25-201. Election of United States senators and representatives.
13-25-202. Vacancy in office of United States senator.
13-25-203. Vacancy in office of United States representative.
13-25-204. Certificates issued by governor.
13-25-205. Nominations for special election.

Chapter Cross-References

Definitions applicable to this chapter, 13-1-101.

Reports of contributions and expenditures required of candidates for federal office, 13-37-225.

Part 1

Presidential Elections

Part Cross-References

Presidential elections, Art. II, sec. 1, U.S. Const.; amend. 12, U.S. Const.

13-25-101. Nomination of electors — ballot. (1) Each political party qualified under 13-10-601 shall nominate presidential electors for this state and file certificates of nomination for these candidates with the secretary of state in a form prescribed by the secretary of state no later than 75 days before the general election, in the manner and number provided by law.

(2) The secretary of state shall certify to the election administrator the names of the candidates for president and vice president of the several political parties, which must be printed on the ballot.

(3) The names of candidates for electors of president and vice president may not be printed upon the ballot.

History: En. Sec. 215, Ch. 368, L. 1969; R.C.M. 1947, 23-4302(1) thru (3); amd. Sec. 208, Ch. 571, L. 1979; amd. Sec. 34, Ch. 250, L. 1985; amd. Sec. 9, Ch. 390, L. 1993.

Cross-References

Ballot form and uniformity, 13-12-202.

13-25-102. Election of electors. (1) On the Tuesday next after the first Monday of November in the year in which a president of the United States is to be elected, there shall be elected as many electors for president and vice president of the United States as are allocated to this state.

(2) The votes cast for candidates for president and vice president of each political party shall be counted for the candidates for presidential electors of the political party whose names have been filed with the secretary of state.

History: (1)En. Sec. 214, Ch. 368, L. 1969; Sec. 23-4301, R.C.M. 1947; (2)En. Sec. 215, Ch. 368, L. 1969; Sec. 23-4302, R.C.M. 1947; R.C.M. 1947, 23-4301, 23-4302(4).

13-25-103. Returns — lists of electors elected. (1) The votes for candidates for president and vice president shall be given, received, returned, and canvassed as the votes are given, returned, and canvassed for candidates for congress.

(2) The secretary of state shall prepare three lists of names of electors elected and affix the seal of the state to the lists.

(3) The lists shall be signed by the governor and secretary of state and delivered by the latter to the college of electors at the hour of their meeting.

History: En. Sec. 216, Ch. 368, L. 1969; R.C.M. 1947, 23-4303.

13-25-104. Meeting and voting of electors. (1) The electors shall meet in Helena at 2 p.m. on the first Monday after the second Wednesday in December following their election.

(2) The electors shall vote by separate ballots for one person for president and one for vice president of the United States.

(3) The electors shall cast their ballots for the persons who received the highest number of votes for president and vice president of the United States, respectively, in the most recently conducted general election in the state of Montana.

History: En. Sec. 217, Ch. 368, L. 1969; R.C.M. 1947, 23-4304; amd. Sec. 1, Ch. 61, L. 1981.

13-25-105. Lists of persons voted for. The electors shall make lists of the persons voted for as president and vice president; indicate the number of votes for each; and certify, seal, and transmit the lists as prescribed by laws of the United States.

History: En. Sec. 218, Ch. 368, L. 1969; R.C.M. 1947, 23-4305.

13-25-106. Compensation of electors. Electors shall receive the same pay and mileage allowed members of the legislature. Payments shall be certified by the secretary of state and paid by the state auditor from the state general fund.

History: En. Sec. 219, Ch. 368, L. 1969; R.C.M. 1947, 23-4306.

Cross-References

Pay and mileage allowed to Legislators, Title 5, ch. 2, part 3.

13-25-107. Vacancy in office of elector. If a vacancy occurs, the electors present shall elect a citizen of the state to fill the vacancy.

History: En. Sec. 220, Ch. 368, L. 1969; R.C.M. 1947, 23-4307.

Part 2
Congressional Elections

Part Cross-References

Election to Congress generally, Art. I, sec. 2, U.S. Const.; amend. 17, U.S. Const.

Time, place, and manner of elections, Art. I, sec. 4, U.S. Const.

13-25-201. Election of United States senators and representatives. (1) United States senators and representatives shall be elected at the general election preceding commencement of the term to be filled.

(2) Nominations and elections shall be as provided by law for governor.

History: En. Sec. 221, Ch. 368, L. 1969; amd. Sec. 51, Ch. 365, L. 1977; R.C.M. 1947, 23-4401.

Cross-References

Manner of election of Governor, Art. VI, sec. 2, Mont. Const.

13-25-202. Vacancy in office of United States senator. (1) If a vacancy occurs in the office of United States senator, an election to fill the vacancy shall be held at the next general election. If the election is invalid or not held at that time, the election to fill the vacancy shall be held at the next succeeding general election.

(2) The governor may make a temporary appointment to fill the vacancy until the election.

History: En. Sec. 222, Ch. 368, L. 1969; amd. Sec. 52, Ch. 365, L. 1977; R.C.M. 1947, 23-4402.

13-25-203. Vacancy in office of United States representative. (1) If a vacancy occurs in the office of United States representative, the governor shall immediately order an election to be held to fill the vacancy, except as provided in subsection (3).

(2) The election to fill the unexpired term shall be held no less than 75 or more than 90 days from the time the vacancy occurs, except that if the vacancy occurs 150 days or less before a primary election or between the primary and general elections in odd-numbered years, the election shall be held with the primary or general election.

(3) If the vacancy occurs between the primary and general election in even-numbered years, the candidate elected to the office for the succeeding full term shall immediately take office to fill the unexpired term.

History: En. 23-4405 by Sec. 53, Ch. 365, L. 1977; R.C.M. 1947, 23-4405; amd. Sec. 209, Ch. 571, L. 1979; amd. Sec. 35, Ch. 250, L. 1985.

13-25-204. Certificates issued by governor. Upon receipt of the report of the canvass required by 13-15-507, the governor shall send a certificate of election to each person elected.

History: En. Sec. 223, Ch. 368, L. 1969; R.C.M. 1947, 23-4403; amd. Sec. 53, Ch. 575, L. 1981.

13-25-205. Nominations for special election. (1) When a special election is ordered to fill a vacancy in the office of United States senator or United

States representative, each political party shall choose a candidate according to the rules of the party. Nominations by parties shall be made no later than 75 days before the date set for the election.

(2) Nominating petitions may be filed by independent candidates for the office up to 5:00 p.m. of the 75th day before the election.

History: En. Sec. 210, Ch. 571, L. 1979; amd. Sec. 36, Ch. 250, L. 1985.

CHAPTER 26

CONVENTION TO RATIFY AMENDMENTS TO UNITED STATES CONSTITUTION

Part 1 — Ratification of Amendments

13-26-101. Convention to be held.
13-26-102. Delegates to constitutional convention.
13-26-103. Nomination of delegates.
13-26-104. Determination of election results.
13-26-105. Ballot form.
13-26-106. Time for convention of delegates.
13-26-107. Operation of the convention.
13-26-108. Compensation of delegates and officers.
13-26-109. Certificate of result — transmission to secretary of state of United States.
13-26-110. Qualifications of petitioners and electors.
13-26-111. Federal acts to supersede state provisions concerning amendments.

Chapter Cross-References

Amendment of United States Constitution, Art. V, U.S. Const.

Definitions applicable to this chapter, 13-1-101.

Part 1

Ratification of Amendments

13-26-101. Convention to be held. If congress proposes an amendment to the constitution of the United States to be ratified by state convention, a convention shall be held.

History: En. Sec. 236, Ch. 368, L. 1969; R.C.M. 1947, 23-4601.

13-26-102. Delegates to constitutional convention. (1) The number of convention delegates shall be equal to the number of members in the legislature. Each district shall have delegates equal to the number of members it is entitled to in the legislature.

(2) Delegates shall be elected at the next primary or general election after congress has proposed the amendment or at a special election called by the governor.

(3) Except as otherwise provided in this chapter, the election shall be in accordance with the laws for the election of members of the legislature.

History: En. Sec. 237, Ch. 368, L. 1969; R.C.M. 1947, 23-4602.

Cross-References

Size of Legislature and representation of each district, Art. V, sec. 2, 14, Mont. Const.; Title 5, ch. 1.

13-26-103. Nomination of delegates. (1) Nominations for the office of delegate shall be by petition signed by not less than 100 voters of the district.

(2) Nominations shall be without political designation but shall be as "in favor of" or "opposed to" ratification of the proposed amendment.

(3) Petitions and acceptances shall be filed not less than 75 days prior to the election.

History: En. Sec. 238, Ch. 368, L. 1969; R.C.M. 1947, 23-4603; amd. Sec. 37, Ch. 250, L. 1985.

13-26-104. Determination of election results. The results of the election are determined as follows:

(1) The votes cast for each candidate "in favor of" ratification, the total votes cast for all candidates "in favor of" ratification, the votes cast for each candidate "opposed to" ratification, and the total votes cast for all candidates "opposed to" ratification shall be ascertained.

(2) From the side receiving the greater number of votes, those candidates (equal in number to the number of delegates to be elected) receiving the highest number of votes are elected.

History: En. Sec. 239, Ch. 368, L. 1969; R.C.M. 1947, 23-4604.

13-26-105. Ballot form. The official ballot form shall be prescribed by the secretary of state.

History: En. Sec. 240, Ch. 368, L. 1969; R.C.M. 1947, 23-4605.

13-26-106. Time for convention of delegates. Delegates shall meet at the state capitol on the first Monday in the month following the election at 10 a.m. and constitute a convention to act upon the proposed amendment.

History: En. Sec. 241, Ch. 368, L. 1969; R.C.M. 1947, 23-4606.

13-26-107. Operation of the convention. A majority of the total number of delegates constitutes a quorum. The convention:

(1) may choose a president, secretary, and other necessary officers;

(2) may make rules governing the procedure of the convention; and

(3) shall judge the qualifications and election of its members.

History: En. Sec. 243, Ch. 368, L. 1969; R.C.M. 1947, 23-4607.

13-26-108. Compensation of delegates and officers. Each delegate shall receive mileage and per diem as provided by law for members of the legislature. The secretary and other officers shall receive compensation fixed by the convention.

History: En. Sec. 242, Ch. 368, L. 1969; R.C.M. 1947, 23-4608.

Cross-References

Mileage and per diem provided to Legislators, 5-2-301.

13-26-109. Certificate of result — transmission to secretary of state of United States. When the convention has agreed by majority vote of delegates attending the convention, a certificate of the result shall be executed by the president and secretary and transmitted to the secretary of state of the United States. A duplicate of the certificate shall be filed with the secretary of state of Montana.

History: En. Sec. 244, Ch. 368, L. 1969; R.C.M. 1947, 23-4609; amd. Sec. 211, Ch. 571, L. 1979.

13-26-110. Qualifications of petitioners and electors. Persons entitled to petition for nomination and vote at the election are determined by the laws on registration.

History: En. Sec. 245, Ch. 368, L. 1969; R.C.M. 1947, 23-4610.

Cross-References

Laws on registration, Title 13, ch. 2.

13-26-111. Federal acts to supersede state provisions concerning amendments. If congress, by resolution or statute, prescribes how the convention shall be constituted and held, this chapter is inoperative, and the convention shall be constituted and held as congress directs. All state officers are directed to take action to constitute the convention as authorized by congress and act as if acting under state statute.

History: En. Sec. 246, Ch. 368, L. 1969; R.C.M. 1947, 23-4611.

CHAPTER 27

BALLOT ISSUES

Part 1 — General Provisions

13-27-101. Establishment of initiative and referendum procedures.
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13-27-103. Sufficiency of signature.
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13-27-201. Form of petition generally.
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13-27-208. Petitions to be made available in each county election administrator's office.

Part 3 — Submission and Processing of Petitions

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13-27-305. Retention of copies by county official.
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13-27-307. Consideration and tabulation of signatures by secretary of state.
13-27-308. Certification of petition to governor.
13-27-309. Repealed.
13-27-310. Transmittal of issues referred by the legislature and ballot forms to the attorney general.
13-27-311. Publication of proposed constitutional amendments.
13-27-312. Review of petition by attorney general — preparation of statements — fiscal note.
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13-27-314. Repealed.
13-27-315. Statements by attorney general on issues referred by legislature.

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Part 4 — Voter Information Pamphlets

13-27-401. Voter information pamphlet.
13-27-402. Committees to prepare arguments for and against ballot issues.
13-27-403. Appointment to committee.
13-27-404. Committee chairman.
13-27-405. Committee expenses.
13-27-406. Limitation on length of argument — time of filing.
13-27-407. Rebuttal arguments.
13-27-408. Rejection of improper arguments.
13-27-409. Liability for contents of argument.
13-27-410. Printing and distribution of voter information pamphlet.

Part 5 — Election Procedure

13-27-501. Secretary of state to certify ballot form — abbreviated ballot.
13-27-502. Preparation of ballots by county officials.
13-27-503. Determination of result of election.
13-27-504. Copy of approved issues to be sent to legislative services division.

Chapter Cross-References

Initiative, Art. III, sec. 4, Mont. Const.

Referendum, Art. III, sec. 5, Mont. Const.

Initiative for constitutional convention, Art. XIV, sec. 2, Mont. Const.

Constitutional amendment by legislative referendum, Art. XIV, sec. 8, Mont. Const.

Constitutional amendment by initiative, Art. XIV, sec. 9, Mont. Const.

Form for local government initiative and referendum, 7-5-132.

Form of petition calling for election on question of issuing county bonds, 7-7-2224.

Form of petition for creation of urban transportation district, 7-14-204.

Definitions applicable to this chapter, 13-1-101.

Initiative or referendum required to approve nuclear facility, 75-20-201.

Form of ballot to summarize improvements to drainage district assessments, 85-8-624.

Part 1
General Provisions

13-27-101. Establishment of initiative and referendum procedures. The right of the people to petition to enact laws by initiative, to petition to approve or reject by referendum any act of the legislature except an appropriation of money, to call for a vote on whether there shall be a constitutional convention, and to propose constitutional amendments by initiative as guaranteed by The Constitution of the State of Montana may be exercised through adherence to the procedures established in this chapter.

History: En. 37-115 by Sec. 1, Ch. 342, L. 1977; R.C.M. 1947, 37-115.

Cross-References

Initiative, Art. III, sec. 4, Mont. Const.

Referendum, Art. III, sec. 5, Mont. Const.

Initiative for constitutional convention, Art. XIV, sec. 2, Mont. Const.

Constitutional amendment by initiative, Art. XIV, sec. 9, Mont. Const.

Verification of signatures by county officials — allocating voters following reapportionment, 13-27-303.

13-27-102. Who may petition. A petition for the initiative, the referendum, or to call a constitutional convention may be signed only by a qualified elector of the state of Montana.

History: En. 37-116 by Sec. 2, Ch. 342, L. 1977; R.C.M. 1947, 37-116(part).

Cross-References

Qualified elector, Art. IV, sec. 2, Mont. Const.

13-27-103. Sufficiency of signature. A signature may not be counted unless the elector has signed in substantially the same manner as on the voter registry card. If the elector is registered with a first and middle name, the use of an initial instead of either the first or middle name, but not both names, need not disqualify the signature. The signature may be counted so long as the signature, taken as a whole, bears sufficient similarity to the signature on the registry card as to provide reasonable certainty of its authenticity.

History: En. 37-116 by Sec. 2, Ch. 342, L. 1977; R.C.M. 1947, 37-116(part); amd. Sec. 1, Ch. 494, L. 1979.

Cross-References

Register of electors, 13-2-112.

13-27-104. Time for filing. Unless a specific time for filing is provided in the constitution, all petitions filed with the secretary of state, certified as provided by law, must be received before 5 p.m. of the third Friday of the fourth month prior to the election at which they are to be voted upon by the people.

History: En. 37-125 by Sec. 11, Ch. 342, L. 1977; R.C.M. 1947, 37-125; amd. Sec. 4, Ch. 359, L. 1991.

Cross-References

Time for filing of petition for initiative, Art. III, sec. 4, Mont. Const.

Time for filing of petition for referendum, Art. III, sec. 5, Mont. Const.

13-27-105. Effective date of initiative and referendum issues. (1) Unless the petition placing an initiative issue on the ballot states otherwise, an initiative issue, other than a constitutional amendment, approved by the people is effective on October 1 following approval. If the issue delegates rulemaking authority, it is effective no sooner than October 1 following approval.

(2) A constitutional amendment proposed by initiative or by the legislature and approved by the people is effective on July 1 following approval unless the amendment provides otherwise.

(3) Unless specifically provided by the legislature in an act referred by it to the people or until suspended by a petition signed by at least 15% of the qualified electors in a majority of the legislative representative districts, an act referred to the people is in effect as provided by law until it is approved or rejected at the election. An act that is rejected is repealed effective the date the result of the canvass is filed by the secretary of state under 13-27-503. An act referred to the people that was in effect at the time of the election and is approved by the people remains in effect. An act that was suspended by a petition and is approved by the people is effective the date the result of the canvass is filed by the secretary of state under 13-27-503. An act referred by the legislature that contains an effective date following the election becomes effective on that date if approved by the people. An act that provides no effective date and whose substantive provisions were delayed by the legislature pending approval at an election and that is approved is effective October 1 following the election.

History: En. 37-137 by Sec. 23, Ch. 342, L. 1977; R.C.M. 1947, 37-137; amd. Sec. 1, Ch. 73, L. 1981; amd. Sec. 8, Ch. 79, L. 1983; amd. Sec. 16, Ch. 298, L. 1987.

Cross-References

Suspension by petition, Art. III, sec. 5, Mont. Const.

Constitutional amendment by initiative, Art. XIV, sec. 9, Mont. Const.

13-27-106. Violations — penalties. A person who knowingly makes a false entry upon a petition or affidavit required by this chapter or who knowingly signs a petition to place the same issue on the ballot at the same election more than once is guilty of unsworn falsification or tampering with public records or information, as appropriate, and is punishable as provided in 45-7-203 or 45-7-208, as applicable.

History: En. 37-138 by Sec. 24, Ch. 342, L. 1977; R.C.M. 1947, 37-138.

Part 2
Form of Petitions

13-27-201. Form of petition generally. (1) A petition for the initiative, the referendum, or to call a constitutional convention must be substantially in the form provided by this chapter. Clerical or technical errors that do not interfere with the ability to judge the sufficiency of signatures on the petition do not render a petition void.

(2) Petition sheets may not exceed 8 1/2 x 14 inches in size. Separate sheets of a petition may be fastened in sections of not more than 25 sheets. Near the top of each sheet containing signature lines must be printed the title of the statute or constitutional amendment proposed or the measure to be referred or a statement that the petition is for the purpose of calling a constitutional convention. If signature lines are printed on both the front and back of a petition sheet, the information required above must appear on both the front and back of the sheet. The complete text of the measure proposed or referred must be attached to or contained within each signature sheet if sheets are circulated separately. The text of the measure must be in the bill form provided in the most recent issue of the bill drafting manual furnished by the legislative services division. If sheets are circulated in sections, the complete text of the measure must be attached to each section.

History: En. 37-117 by Sec. 3, Ch. 342, L. 1977; R.C.M. 1947, 37-117(1), (2); amd. Sec. 1, Ch. 400, L. 1979; amd. Sec. 53, Ch. 545, L. 1995.

Compiler's Comments

1995 Amendment: Chapter 545 in (2), at end of fifth sentence after "legislative", substituted "services division" for "council". Amendment effective July 1, 1995.

13-27-202. Recommendations — approval of form required. (1) Before submission of a sample sheet to the secretary of state pursuant to subsection (3), the following requirements must be fulfilled:

(a) The text of the proposed measure must be submitted to the legislative services division for review.

(b) The legislative services division staff shall review the text for clarity, consistency, and any other factors the council staff considers when drafting proposed legislation.

(c) Within 14 days after submission of the text, the legislative services division staff shall make to the person submitting the text written recommendations for changes in the text or a statement that no changes are recommended.

(d) The person submitting the text shall consider the recommendations and respond in writing to the legislative services division, accepting, rejecting, or modifying each of the recommended changes. If no changes are recommended, no response is required.

(2) The legislative services division shall furnish a copy of the correspondence provided for in subsection (1) to the secretary of state, who shall make a copy of the correspondence available to any person upon request.

(3) Before a petition may be circulated for signatures, a sample sheet containing the text of the proposed measure must be submitted to the secretary of state in the form in which it will be circulated. The sample petition may not be submitted to the secretary of state more than 1 year prior to the final date for filing the signed petition with the secretary of state. The secretary of state shall refer a copy of the petition sheet to the attorney general for approval. The secretary of state and attorney general shall each review the petition for sufficiency as to form and approve or reject the form of the petition, stating the reasons for rejection, if any. The secretary of state or the attorney general may not reject the petition solely because the text contains material not submitted to the legislative services division unless the material not submitted to the legislative services division is a substantive change not suggested by the legislative services division.

(4) The secretary of state shall review the comments and statements of the attorney general received pursuant to 13-27-312 and make a final decision as to the approval or rejection of the form of the petition. The secretary of state shall send written notice to the person who submitted the petition sheet of the approval or rejection within 28 days after submission of the petition sheet. If the petition is rejected, the notice must include reasons for rejection.

(5) A petition with technical defects in form may be approved with the condition that those defects will be corrected before the petition is circulated for signatures.

(6) The secretary of state shall upon request provide the person submitting the petition with a sample petition form, including the text of the proposed measure, the statement of purpose, and the statements of implications, all as approved by the secretary of state and the attorney general. The petition may be circulated in the form of the sample prepared by the secretary of state.

History: En. 37-117 by Sec. 3, Ch. 342, L. 1977; R.C.M. 1947, 37-117(3); amd. Sec. 2, Ch. 400, L. 1979; amd. Sec. 1, Ch. 488, L. 1981; amd. Sec. 1, Ch. 4, L. 1983; amd. Sec. 5, Ch. 359, L. 1991; amd. Sec. 54, Ch. 545, L. 1995.

Compiler's Comments

1995 Amendment: Chapter 545 throughout section substituted reference to Legislative Services Division for reference to Legislative Council; and made minor changes in style. Amendment effective July 1, 1995.

13-27-203. Numbering of petitions. The secretary of state shall serially number all submitted petitions that are approved as to form continuously from year to year. The numbering system shall distinguish the different types of petitions received and include provisions for numbering measures referred to the people by the legislature.

History: En. 37-117 by Sec. 3, Ch. 342, L. 1977; R.C.M. 1947, 37-117(4).

13-27-204. Petition for the initiative. (1) The following is substantially the form for a petition calling for a vote to enact a law by the initiative:

PETITION TO PLACE INITIATIVE NO.____
ON THE ELECTION BALLOT

(a) If 5% of the voters in each of 34 legislative representative districts sign this petition and the total number of voters signing this petition is ....., this measure will appear on the next general election ballot. If a majority of voters vote for this measure at that election, it will become law.

(b) We, the undersigned Montana voters, propose that the secretary of state place the following measure on the ...., 19..., general election ballot:

(Title of measure written pursuant to 13-27-312)
(Statement of implication written pursuant to 13-27-312)

(c) Voters are urged to read the complete text of the measure, which appears (on the reverse side of, attached to, etc., as applicable) on this sheet. A signature on this petition is only to put the measure on the ballot and does not necessarily mean the signer agrees with the measure.

(d)

WARNING

A person who purposefully signs a name other than his/her own to this petition or who signs more than once for the same issue at one election or signs when not a legally registered Montana voter is subject to a $500 fine, 6 months in jail, or both.

(e) Each person must sign his/her name and address in substantially the same manner as on his/her voter registry card or the signature will not be counted.

(2) Numbered lines shall follow the above heading. Each numbered line shall contain spaces for the signature, post-office address, legislative representative district number, and printed last name of the signer.

History: En. 37-118 by Sec. 4, Ch. 342, L. 1977; R.C.M. 1947, 37-118; amd. Sec. 2, Ch. 488, L. 1981.

Cross-References

Initiative, Art. III, sec. 4, Mont. Const.

Verification of signatures by county officials — allocating voters following reapportionment, 13-27-303.

13-27-205. Petition for the referendum. (1) The following is substantially the form for a petition calling for approval or rejection of an act of the legislature by the referendum:

PETITION TO PLACE REFERENDUM NO.____
ON THE ELECTION BALLOT

(a) If 5% of the voters in each of 34 legislative representative districts sign this petition and the total number of voters signing the petition is ...., Senate (House) Bill Number .... will appear on the next general election ballot. If a majority of voters vote for this measure at that election it will become law.

(b) We, the undersigned Montana voters, propose that the secretary of state place the following Senate (House) Bill Number ...., passed by the legislature on ...... on the next general election ballot:

(Title of referendum written pursuant to 13-27-312)
(Statement of implication written pursuant to 13-27-312)

(c) Voters are urged to read the complete text of the measure, which appears (on the reverse side of, attached to, etc., as applicable) on this sheet. A signature on this petition is only to put the measure on the ballot and does not necessarily mean the signer agrees with the measure.

(d)

WARNING

A person who purposefully signs a name other than his/her own to this petition or who signs more than once for the same issue at one election or signs when not a legally registered Montana voter is subject to a $500 fine, 6 months in jail, or both.

(e) Each person must sign his/her name and address in substantially the same manner as on his/her voter registry card, or the signature will not be counted.

(2) Numbered lines shall follow the above heading. Each numbered line shall contain spaces for the signature, post-office address, legislative representative district number, and printed last name of the signer.

History: En. 37-119 by Sec. 5, Ch. 342, L. 1977; R.C.M. 1947, 37-119; amd. Sec. 7, Ch. 198, L. 1981; amd. Sec. 3, Ch. 488, L. 1981.

Cross-References

Referendum, Art. III, sec. 5, Mont. Const.

Verification of signatures by county officials — allocating voters following reapportionment, 13-27-303.

13-27-206. Petition for initiative for constitutional convention. (1) The following is substantially the form for a petition to direct the secretary of state to submit to the qualified voters the question of whether there shall be a constitutional convention:

PETITION TO PLACE
INITIATIVE NO.____, CALLING FOR
A CONSTITUTIONAL CONVENTION, ON
THE ELECTION BALLOT

(a) If 10% of the voters in each of 40 legislative districts sign this petition and the total number of voters signing this petition is ....., the question of whether to have a constitutional convention will appear on the next general election ballot. If a majority of voters vote for the constitutional convention the legislature will call for a constitutional convention at its next session.

(b) We, the undersigned Montana voters, propose that the secretary of state place the question of whether to hold a constitutional convention on the ...., 19..., general election ballot:

(Title of the initiative written pursuant to 13-27-312)
(Statement of implication written pursuant to 13-27-312)

(c) A signature on this petition is only to put the call for a constitutional convention on the ballot and does not necessarily mean the signer is in favor of calling a constitutional convention.

(d)

WARNING

A person who purposefully signs a name other than his/her own to this petition or who signs more than once for the same issue at one election or signs when not a legally registered Montana voter is subject to a $500 fine or 6 months in jail, or both.

(e) Each person must sign his/her name and address in substantially the same manner as on his/her voter registry card, or the signature will not be counted.

(2) Numbered lines shall follow the above heading. Each numbered line shall also contain spaces for the signature, post-office address, legislative representative district number, and printed last name of the signer.

History: En. 37-120 by Sec. 6, Ch. 342, L. 1977; R.C.M. 1947, 37-120; amd. Sec. 7, Ch. 198, L. 1981; amd. Sec. 4, Ch. 488, L. 1981.

Cross-References

Initiative for constitutional convention, Art. XIV, sec. 2, Mont. Const.

Verification of signatures by county officials — allocating voters following reapportionment, 13-27-303.

13-27-207. Petition for initiative for constitutional amendment. (1) The following is substantially the form for a petition for the initiative to amend the constitution:

PETITION TO PLACE CONSTITUTIONAL
AMENDMENT NO.____ ON
THE ELECTION BALLOT

(a) If 10% of the voters in each of 40 legislative districts sign this petition and the total number of voters signing the petition is ....., this constitutional amendment will appear on the next general election ballot. If a majority of voters vote for this amendment at that election, it will become part of the constitution.

(b) We, the undersigned Montana voters, propose that the secretary of state place the following constitutional amendment on the ...., 19..., general election ballot:

(Title of the proposed constitutional amendment
written pursuant to 13-27-312)
(Statement of implication written pursuant to 13-27-312)

(c) Voters are urged to read the complete text of the measure, which appears (on the reverse side of, attached to, etc., as applicable) on this sheet. A signature on this petition is only to put the constitutional amendment on the ballot and does not necessarily mean the signer agrees with the amendment.

(d)

WARNING

A person who purposefully signs a name other than his/her own to this petition or who signs more than once for the same issue at one election or signs when not a legally registered Montana voter is subject to a $500 fine, 6 months in jail, or both.

(e) Each person must sign his/her name and address in substantially the same manner as on his/her voter registry card or the signature will not be counted.

(2) Numbered lines shall follow the above heading. Each numbered line shall contain spaces for the signature, post-office address, legislative representative district number, and printed last name of the signer.

History: En. 37-121 by Sec. 7, Ch. 342, L. 1977; R.C.M. 1947, 37-121; amd. Sec. 5, Ch. 488, L. 1981.

Cross-References

Amendment by initiative, Art. XIV, sec. 9, Mont. Const.

Verification of signatures by county officials — allocating voters following reapportionment, 13-27-303.

13-27-208. Petitions to be made available in each county election administrator's office. When the secretary of state sends written notice of the approval of the form of a petition as required under 13-27-202(4), he shall forward a copy of the petition, along with signature sheets, to the election administrator of each county. The election administrator shall make a copy of each approved petition available for reading and signing in his office during business hours in an election year until the petitions are submitted under 13-27-301. The secretary of state may charge the person who submitted the petition a fee sufficient to reimburse the secretary of state for the cost of providing copies of the petition and signature sheets to each county election administrator.

History: En. Sec. 1, Ch. 158, L. 1991.

Part 3

Submission and Processing of Petitions

13-27-301. Submission of petition sheets — withdrawal of signatures. (1) Signed sheets or sections of petitions shall be submitted to the official responsible for registration of electors in the county in which the signatures were obtained no sooner than 9 months and no later than 4 weeks before the final date for filing the petition with the secretary of state.

(2) Signatures may be withdrawn from a petition for constitutional amendment, constitutional convention, initiative, or referendum up to the time of final submission of petition sheets as provided in subsection (1). The secretary of state shall prescribe the form to be used by an elector desiring to have his signature withdrawn from a petition.

History: En. 37-122 by Sec. 8, Ch. 342, L. 1977; R.C.M. 1947, 37-122(1); amd. Sec. 3, Ch. 400, L. 1979; (2)En. Sec. 15, Ch. 298, L. 1987; amd. Sec. 6, Ch. 359, L. 1991.

Cross-References

Election Administrator as registration official, 13-1-301.

Date of filing of petitions, 13-27-104.

13-27-302. Certification of signatures. An affidavit, in substantially the following form, shall be attached to each sheet or section submitted to the county official:

I, (Name of person who circulated this petition), affirm, or being first sworn, depose and say: that I circulated or assisted in circulating the petition to which this affidavit is attached and I believe the signatures thereon are genuine, are the signatures of the persons whose names they purport to be, are the signatures of Montana electors who are registered at the address following their signature, and that the signers knew the contents of the petition before signing the same.

....
(Signature of petition circulator)

....
(Address of petition circulator)

Subscribed and sworn to before me this .... day of ....., 19...

....
Seal (Person authorized to take oaths)

....
(Title or notarial information)

History: En. 37-122 by Sec. 8, Ch. 342, L. 1977; R.C.M. 1947, 37-122(2); amd. Sec. 6, Ch. 488, L. 1981.

Cross-References

Officers who may administer oaths, 1-6-101.

13-27-303. Verification of signatures by county official — allocating voters following reapportionment — duplicate signatures. (1) Except as required by 13-27-104, within 4 weeks after receiving the sheets or sections of a petition, the county official shall check the names of all signers to verify they are registered electors of the county. In addition, the official shall randomly select signatures on each sheet or section and compare them with the signatures of the electors as they appear in the registration records of the office. If all the randomly selected signatures appear to be genuine, the number of signatures of registered electors on the sheet or section may be certified to the secretary of state without further comparison of signatures. If any of the randomly selected signatures do not appear to be genuine, all signatures on that sheet or section must be compared with the signatures in the registration records of the office.

(2) For the purpose of allocating the signatures of voters among the several legislative representative districts of the state as required to certify a petition for a ballot issue under the provisions of this chapter following the filing of a districting and apportionment plan under 5-1-111 and before the first gubernatorial election following the filing of the plan, the new districts must be used with the number of signatures needed for each legislative representative district being the total votes cast for governor in the last gubernatorial election divided by the number of legislative representative districts.

(3) Upon discovery of fraudulent signatures or duplicate signatures of an elector on any one issue, the election administrator may submit the name of the elector or the petition circulator, or both, to the county attorney to be investigated under the provisions of 13-27-106 and 13-35-207.

History: En. 37-123 by Sec. 9, Ch. 342, L. 1977; R.C.M. 1947, 37-123(3), (4); amd. Sec. 4, Ch. 400, L. 1979; (2)En. Sec. 1, Ch. 512, L. 1983; amd. Sec. 17, Ch. 298, L. 1987; amd. Sec. 1, Ch. 374, L. 1995.

Compiler's Comments

1995 Amendment: Chapter 374 in (2), near middle after "before", substituted "the first gubernatorial election following the filing of" for "members of the house of representatives have been elected and qualified under" and at end substituted "new districts must be used with the number of signatures needed for each legislative representative district being the total votes cast for governor in the last gubernatorial election divided by the number of legislative representative districts" for "legislative representative districts among which the signatures must be allocated must be those in existence when the plan was filed". Amendment effective April 12, 1995.

Cross-References

Register of electors, 13-2-112.

13-27-304. County official to forward verified sheets. The county official verifying the number of registered electors signing the petition shall forward it to the secretary of state by certified mail with a certificate in substantially the following form attached:

To the Honorable ......, Secretary of State of the state of Montana:

I, ..., ... (title) of the County of ...., certify that I have examined the attached (section containing .... sheets) or (.... sheets) of the petition for (referendum, initiative, constitutional convention, or constitutional amendment) No. .... in the manner prescribed by law; and I believe that .... (number) signatures in Legislative Representative District No. .... (repeat for each district included in sheet or section) are valid; and I further certify that the affidavit of the circulator of the (sheet) (section) of the petition is attached and the post-office address and legislative representative district number is completed for each valid signature.

Signed: .... (Date) .... (Signature)
Seal .... (Title)

History: En. 37-123 by Sec. 9, Ch. 342, L. 1977; R.C.M. 1947, 37-123(1).

Cross-References

Role of Secretary of State, Title 13, ch. 1, part 2.

13-27-305. Retention of copies by county official. The county official certifying the sheets or sections of a petition shall keep a copy of the sheets or sections certified in the official files of his office. The copies may be destroyed 3 months after the date of the election specified in the petition unless a court action is pending on the sufficiency of the petition.

History: En. 37-123 by Sec. 9, Ch. 342, L. 1977; R.C.M. 1947, 37-123(2).

13-27-306. Challenge to signatures by elector of county. A registered elector of a county having reason to believe that signatures on a petition that were not among those actually compared with signatures in the registration records of the county are not genuine may file a sworn statement or affirmation of his belief and request for comparison of those signatures he believes are not genuine with the county official certifying the sheet or section of the petition. If any of the challenged signatures are not genuine, the county official must compare all signatures on that sheet or section and issue an amended certificate to the secretary of state, giving the correct number of valid signatures, on or before the deadline, as provided for in 13-27-104, for filing in the office of the secretary of state.

History: En. 37-123 by Sec. 9, Ch. 342, L. 1977; R.C.M. 1947, 37-123(5); amd. Sec. 5, Ch. 400, L. 1979.

13-27-307. Consideration and tabulation of signatures by secretary of state. (1) The secretary of state shall consider and tabulate only such signatures on petitions as are certified by the proper county official, and each such certificate is prima facie evidence of the facts stated therein. However, the secretary of state may consider and tabulate any signature not certified by the county official that is certified by a notary public of the county in which the signer resides to be the genuine signature of an elector legally qualified to sign the petition.

(2) The official certificate of the notary public for any signature not certified as valid by the county official shall be in substantially the following form:

State of Montana)
)ss.
County of..........)

I, ... (name), a duly qualified and acting notary public in and for the above-named county and state, do hereby certify that I am personally acquainted with each of the following-named electors whose signatures are affixed to the annexed (petition) (copy of a petition) and I know of my own knowledge that they are registered electors of the state of Montana and of the county and legislative district written after their names in the petition and that their post-office addresses are correctly stated therein.

....(Names of such electors)

In testimony whereof, I have hereunto set my hand and official seal this .... day of ......, 19...

.... (Signature)

Seal... (Notarial information)

History: En. 37-124 by Sec. 10, Ch. 342, L. 1977; R.C.M. 1947, 37-124; amd. Sec. 212, Ch. 571, L. 1979.

Cross-References

Verification of signatures by county officials — allocating voters following reapportionment, 13-27-303.

13-27-308. Certification of petition to governor. When sheets or sections of a petition for referendum, initiative, constitutional convention, or constitutional amendment containing a sufficient number of signatures have been filed with the secretary of state within the time required by the constitution or by law, he shall immediately certify to the governor that the completed petition has been officially filed.

History: En. 37-126 by Sec. 12, Ch. 342, L. 1977; R.C.M. 1947, 37-126(part).

13-27-309. Repealed. Sec. 195, Ch. 575, L. 1981.

History: En. 37-126 by Sec. 12, Ch. 342, L. 1977; R.C.M. 1947, 37-126(part).

13-27-310. Transmittal of issues referred by the legislature and ballot forms to the attorney general. (1) The secretary of state shall transmit a copy of the form in which a ballot issue proposed by petition will appear on the ballot to the attorney general on the same day the completed petition is certified to the governor.

(2) The secretary of state shall transmit a copy of an act referred to the people or a constitutional amendment proposed by the legislature and a copy of the form in which the issue will appear on the ballot to the attorney general no later than 6 months before the election at which the issue will be voted on by the people.

(3) If the ballot form is not approved by the attorney general pursuant to 13-27-313, the secretary of state shall immediately submit a new ballot form to the attorney general.

History: En. 37-127 by Sec. 13, Ch. 342, L. 1977; R.C.M. 1947, 37-127(1), (2); amd. Sec. 6, Ch. 400, L. 1979.

Cross-References

Approval of form required, 13-27-202.

13-27-311. Publication of proposed constitutional amendments. (1) If a proposed constitutional amendment or amendments are submitted to the people, the secretary of state shall have the proposed amendment or amendments published in full twice each month for 2 months previous to the election at which they are to be voted upon by the people, in not less than one newspaper of general circulation in each county.

(2) The secretary of state may arrange for newspaper, radio, or television publication of proposed constitutional amendments in each county. A summary of the amendment as provided by the attorney general, as described in 13-27-312 or 13-27-315, would suffice for the publication required by this section and should be made at least twice each month for 2 months previous to the election.

History: En. Sec. 12, Ch. 368, L. 1969; amd. Sec. 1, Ch. 38, L. 1973; amd. Sec. 26, Ch. 342, L. 1977; amd. Sec. 6, Ch. 365, L. 1977; R.C.M. 1947, 23-2802; amd. Sec. 213, Ch. 571, L. 1979.

Cross-References

Amendment by referendum, Art. XIV, sec. 8, Mont. Const.

Amendment by initiative, Art. XIV, sec. 9, Mont. Const.

13-27-312. Review of petition by attorney general — preparation of statements — fiscal note. (1) Upon receipt of a petition from the office of the secretary of state pursuant to 13-27-202, the attorney general shall examine the petition as to form and, if the proposed ballot issue has an effect on the revenues, expenditures, or the fiscal liability of the state, shall order a fiscal note incorporating an estimate of such effect, the substance of which must substantially comply with the provisions of 5-4-205. The budget director, in cooperation with the agency or agencies affected by the petition, is responsible for preparing the fiscal note and shall return it within 6 days unless the attorney general, for good cause shown, extends the time for completing the fiscal note.

(2) If the petition form is approved, the attorney general shall endeavor to seek out parties on both sides of the issue and obtain their advice. The attorney general shall prepare:

(a) a statement, not to exceed 100 words, explaining the purpose of the measure; and

(b) statements, not to exceed 25 words each, explaining the implications of a vote for and a vote against the measure.

(3) The attorney general shall prepare a fiscal statement of no more than 50 words if a fiscal note was prepared for the proposed ballot issue, such statement to be used on the petition and ballot if the measure is placed on the ballot.

(4) The statement of purpose and the statements of implication must express the true and impartial explanation of the proposed ballot issue in plain,

easily understood language and may not be arguments or written so as to create prejudice for or against the measure.

(5) The statement of purpose, unless altered by a court under 13-27-316, is the petition title for the measure circulated by the petition and the ballot title if the measure is placed on the ballot.

(6) The statements of implication shall be placed beside the diagram provided for marking of the ballot in a manner similar to but not limited to the following example:

☐ FOR extending the right to vote to persons 18 years of age

☐ AGAINST extending the right to vote to persons 18 years of age

(7) If the petition is rejected as to form, the attorney general shall forward his comments to the secretary of state within 21 days after receipt of the petition by the attorney general. If the petition is approved as to form, the attorney general shall forward the statement of purpose, the statements of implication, and the fiscal statement, if applicable, to the secretary of state within 21 days after receipt of the petition by the attorney general.

History: En. 37-127 by Sec. 13, Ch. 342, L. 1977; R.C.M. 1947, 37-127(3); amd. Sec. 7, Ch. 400, L. 1979; amd. Sec. 1, Ch. 336, L. 1981; amd. Sec. 7, Ch. 488, L. 1981; amd. Sec. 10, Ch. 3, L. 1985; amd. Sec. 7, Ch. 359, L. 1991.

Cross-References

Secretary of State to certify ballot form, 13-27-501.

13-27-313. Review of ballot forms by attorney general. The attorney general shall examine each ballot form submitted to his office pursuant to 13-27-310 and within 20 days of receipt of the ballot form shall notify the secretary of state of his approval or rejection of the ballot form. If the ballot form is rejected, the attorney general shall approve or reject a new ballot form submitted by the secretary of state pursuant to 13-27-310(3) within 5 days of receiving the new form.

History: En. 37-127 by Sec. 13, Ch. 342, L. 1977; R.C.M. 1947, 37-127(4); amd. Sec. 8, Ch. 400, L. 1979.

13-27-314. Repealed. Sec. 19, Ch. 400, L. 1979.

History: En. 37-127 by Sec. 13, Ch. 342, L. 1977; R.C.M. 1947, 37-127(5).

13-27-315. Statements by attorney general on issues referred by legislature. (1) Upon receipt of a copy of a ballot form under 13-27-310(2) for an issue proposed by the legislature, the attorney general shall order a fiscal note as provided in 13-27-312(1) if the issue has an effect on the revenues, expenditures, or the fiscal liability of the state. At the same time the explanatory statement is prepared under subsection (2), the attorney general shall prepare a fiscal statement of no more than 50 words to be forwarded to the secretary of state at the same time as the explanatory statement.

(2) At the same time the attorney general, pursuant to 13-27-313, informs the secretary of state of the approval or rejection of a ballot form for an issue proposed by the legislature, the attorney general shall forward to the secretary of state a statement, not exceeding 100 words, expressing a true and impartial explanation of the purpose of the measure in plain, easily understood language.

The statement may not be an argument and may not be written to create a prejudice for or against the issue. The statement prepared under this section is known as the attorney general's explanatory statement.

(3) If statements of the implication of a vote for or against a ballot issue have not been provided by the legislature, the attorney general shall prepare the statements. Requirements for statements of implication for ballot issues referred by the legislature are the same as those provided in 13-27-312 for other ballot issues. Statements of implication prepared by the attorney general must be returned to the secretary of state no later than the time specified for approval of the ballot form.

History: En. 37-127 by Sec. 13, Ch. 342, L. 1977; R.C.M. 1947, 37-127(6); amd. Sec. 9, Ch. 400, L. 1979; amd. Sec. 2, Ch. 336, L. 1981.

13-27-316. Court review of attorney general statements. (1) If the proponents of a ballot measure believe that the statement of purpose, the statements of implication of a vote, or the fiscal statement formulated by the attorney general pursuant to 13-27-312 do not satisfy the requirements of 13-27-312, they may, within 10 days of receipt of the notice from the secretary of state provided for in 13-27-202, file an action in the district court in and for the county of Lewis and Clark challenging the adequacy of the statement and requesting the court to alter the statement.

(2) If the opponents of a ballot measure believe that the statement of purpose, the statements of implication of a vote, or the fiscal statement formulated by the attorney general pursuant to 13-27-312 do not satisfy the requirements of 13-27-312, they may, within 10 days of the date of certification to the governor that the completed petition has been officially filed, file an action in the district court in and for the county of Lewis and Clark challenging the adequacy of the statement and requesting the court to alter the statement.

(3) (a) Notice shall be served upon the secretary of state and upon the attorney general. The action takes precedence over other cases and matters in the district court. The court shall examine the proposed measure and the challenged statement and shall as soon as possible render a decision and certify to the secretary of state a statement which the court determines will meet the requirements of 13-27-312.

(b) A statement certified by the court shall be placed on the petition for circulation and on the official ballot.

(4) A copy of the petition in final form must be filed in the office of the secretary of state by the proponents.

(5) Any party may appeal the order of the district court to the Montana supreme court by filing a notice of appeal within 5 days of the date of the order of the district court.

History: En. Sec. 10, Ch. 400, L. 1979; amd. Sec. 3, Ch. 336, L. 1981.

Part 4

Voter Information Pamphlets

13-27-401. Voter information pamphlet. (1) The secretary of state shall prepare for printing a voter information pamphlet containing the following information for each ballot issue to be voted on at an election, as applicable:

(a) ballot title, fiscal statement if applicable, and complete text of the issue;

(b) the form in which the issue will appear on the ballot;

(c) arguments advocating approval and rejection of the issue; and

(d) rebuttal arguments.

(2) The pamphlet must also contain a notice advising the recipient where additional copies of the pamphlet may be obtained.

(3) Whenever more than one ballot issue is to be voted on at a single election, the secretary of state may publish a single pamphlet for all of the ballot issues. The secretary of state may arrange the information in the order which seems most appropriate, but the information for all issues in the pamphlet must be presented in the same order.

(4) The secretary of state may prescribe by rule the format and manner of submission of the arguments concerning the ballot issue.

History: Ap. p. Sec. 14, Ch. 342, L. 1977; Sec. 37-128, R.C.M. 1947; Ap. p. Sec. 74, Ch. 365, L. 1977; Sec. 37-111, R.C.M. 1947; R.C.M. 1947, 37-111(1), (2), 37-128(1); amd. Sec. 11, Ch. 400, L. 1979; amd. Sec. 4, Ch. 336, L. 1981; amd. Sec. 10, Ch. 390, L. 1993.

13-27-402. Committees to prepare arguments for and against ballot issues. (1) The arguments advocating approval or rejection of the ballot issue and rebuttal arguments shall be submitted to the secretary of state by committees appointed as provided in this section.

(2) The following committees shall be composed of one senator known to favor the measure, appointed by the president of the senate; one representative known to favor the measure, appointed by the speaker of the house of representatives; and one individual who need not be a member of the legislature, appointed by the first two members:

(a) the committee advocating approval of an act referred to the people or of a constitutional amendment proposed by the legislature; or

(b) the committee advocating approval of an act referred to the people by referendum petition.

(3) The committee advocating rejection of an act referred to the people or of a constitutional amendment proposed by the legislature shall be composed of one senator appointed by the president of the senate; one representative appointed by the speaker of the house of representatives; and one individual who need not be a member of the legislature, appointed by the first two members. Whenever possible, the members shall be known to have opposed the issue.

(4) The following shall be three-member committees and shall be appointed by the person submitting the petition to the secretary of state under the provisions of 13-27-202:

(a) the committee advocating approval of a ballot issue proposed by any type of initiative petition; and

(b) the committee advocating rejection of any ballot issue that is a legislative act referred to the people by referendum petition.

(5) A committee advocating rejection of a ballot issue proposed by any type of initiative petition shall be composed of five members. The governor, attorney general, president of the senate, and speaker of the house of representatives shall each appoint one member, and the fifth member shall be appointed by the first four members. All members shall be known to favor rejection of the issue.

(6) No person may be required to serve on any committee under this section, and the person making an appointment must have written acceptance of appointment from the appointee.

History: En. 37-128 by Sec. 14, Ch. 342, L. 1977; R.C.M. 1947, 37-128(2); amd. Sec. 214, Ch. 571, L. 1979; amd. Sec. 1, Ch. 549, L. 1983; amd. Sec. 18, Ch. 298, L. 1987.

13-27-403. Appointment to committee. (1) Except as provided in subsection (2), appointments to committees advocating approval or rejection of an act referred to the people, a constitutional amendment proposed by the legislature, or a ballot measure referred to the people by referendum petition or proposed by any type of initiative petition shall be made no later than 6 months before the election at which the ballot issue will be voted on by the people.

(2) Appointments to committees advocating approval or rejection of a ballot measure referred to the people by referendum petition or proposed by any type of initiative petition that is approved less than 7 months before the election at which the ballot issue will be voted on by the people shall be made no later than 30 days after the measure is approved for circulation by the secretary of state. All persons responsible for appointing members to the committee shall submit to the secretary of state the names and addresses of the appointees no later than the date set by this subsection. Such submission must include the written acceptance of appointment from each appointee required by section 13-27-402(6).

(3) All appointees to a committee pursuant to subsection (1) must be notified by the secretary of state by certified mail, with return receipt requested, no later than 5 days after the deadline set for appointment of committee members, of the deadlines for submission of the committee's arguments.

(4) All appointees to a committee pursuant to subsection (2) must be notified by the secretary of state by certified mail, with return receipt requested, no later than 35 days after the petition has been approved for circulation, of the deadlines for submission of the committee's arguments.

(5) Committees appointed under subsections (2)(b), (4), and (5) of 13-27-402 must be vacated and have no further obligation if the ballot measure for which they were appointed fails to receive sufficient signatures to place it on the ballot. The secretary of state shall notify the committee members of the failure of a ballot measure to receive sufficient signatures no later than 3 days after the filing deadline set in 13-27-104.

History: En. 37-129 by Sec. 15, Ch. 342, L. 1977; R.C.M. 1947, 37-129(1), (2); amd. Sec. 2, Ch. 549, L. 1983; amd. Sec. 19, Ch. 298, L. 1987; amd. Sec. 8, Ch. 359, L. 1991.

13-27-404. Committee chairman. The appointee of the president of the senate is the chairman of any committee to which that officer makes an appointment. The appointing authority for other committees shall name a chairman at the time the appointments are made.

History: En. 37-129 by Sec. 15, Ch. 342, L. 1977; R.C.M. 1947, 37-129(3).

13-27-405. Committee expenses. Each committee is entitled to receive funds for the preparation of arguments and expenses of members not to exceed $100 for a three-member committee and $200 for a five-member committee. Itemized claims for actual expenses incurred, approved by a majority of the committee, shall be submitted to the secretary of state for payment from funds appropriated for that purpose.

History: **En. 37-130 by Sec. 16, Ch. 342, L. 1977; R.C.M. 1947, 37-130; amd. Sec. 12, Ch. 400, L. 1979.**

13-27-406. Limitation on length of argument — time of filing. An argument advocating approval or rejection of a ballot issue is limited to 500 words and must be filed, in typewritten form, with the secretary of state no later than 105 days before the election at which the issue will be voted on by the people. A majority of the committee responsible for preparation shall approve and sign each argument filed. Separate signed letters of approval of an argument may be filed with the secretary of state by members of a committee if necessary to meet the filing deadline.

History: **En. 37-131 by Sec. 17, Ch. 342, L. 1977; R.C.M. 1947, 37-131; amd. Sec. 13, Ch. 400, L. 1979; amd. Sec. 2, Ch. 119, L. 1995.**

Compiler's Comments

1995 Amendment: Chapter 119 increased time for submitting arguments advocating acceptance or rejection of a ballot measure from 85 days to 105 days; and made minor changes in style.

13-27-407. Rebuttal arguments. The secretary of state shall provide copies of the arguments advocating approval or rejection of a ballot issue to the members of the adversary committee no later than 1 day following the filing of both the approval and rejection arguments for the issue in his office. The committees may prepare rebuttal arguments no longer than 250 words that shall be filed, in typewritten form, with the secretary of state no later than 10 days after the deadline for filing the original arguments. Discussion in the rebuttal argument must be confined to the subject matter raised in the argument being rebutted. The rebuttal argument shall be approved and signed by a majority of the committee responsible for its preparation. Separate signed letters of approval may be submitted in the same manner as for the original arguments.

History: **En. 37-132 by Sec. 18, Ch. 342, L. 1977; R.C.M. 1947, 37-132.**

13-27-408. Rejection of improper arguments. The secretary of state shall reject, with the approval of the attorney general, an argument or other matter held to contain obscene, vulgar, profane, scandalous, libelous, or defamatory matter; any language that in any way incites, counsels, promotes, or advocates hatred, abuse, violence, or hostility toward, or that tends to cast ridicule or shame upon, a group of persons by reason of race, color, religion, or sex; or any matter not allowed to be sent through the mail. Such arguments may not be filed or printed in the voter information pamphlet.

History: **En. 37-133 by Sec. 19, Ch. 342, L. 1977; R.C.M. 1947, 37-133(1).**

13-27-409. Liability for contents of argument. Nothing in this chapter relieves an author of any argument from civil or criminal responsibility for statements contained in an argument printed in the voter information pamphlet.

History: **En. 37-133 by Sec. 19, Ch. 342, L. 1977; R.C.M. 1947, 37-133(2).**

Cross-References

Civil liability for libel, Title 27, ch. 1, part 8.

Criminal defamation, 45-8-212.

13-27-410. Printing and distribution of voter information pamphlet. (1) The secretary of state shall arrange with the department of administration by requisition for the printing and delivery of a voter information pamphlet for all ballot issues to be submitted to the people at least 110 days before the election at which they will be submitted. The requisition must include a delivery list providing for shipment of the required number of pamphlets to each county and to the secretary of state.

(2) The secretary of state shall estimate the number of copies necessary to furnish one copy to each voter in each county, except that two or more voters with the same mailing address and the same last name may be counted as one voter. The secretary of state shall provide for an extra supply of the pamphlets in determining the number of voter pamphlets to be ordered in the requisition.

(3) The department of administration shall call for bids and contract with the lowest bidder for the printing and delivery of the voter information pamphlet. The contract must require completion of printing and shipment, as specified on the delivery list, of the voter information pamphlets by not later than 45 days before the election at which the ballot issues will be voted on by the people.

(4) The county official responsible for voter registration in each county shall mail one copy of the voter information pamphlet to each registered voter in the county, except that two or more voters with the same mailing address and the same last name may be counted as one voter. The mailing must take place no later than 2 weeks before the election.

(5) Ten copies of the voter information pamphlet must be available at each precinct for use by any voter wishing to read the explanatory information and complete text before voting on the ballot issues.

History: En. 37-134 by Sec. 20, Ch. 342, L. 1977; R.C.M. 1947, 37-134; amd. Sec. 14, Ch. 400, L. 1979; amd. Sec. 11, Ch. 390, L. 1993; amd. Sec. 3, Ch. 119, L. 1995.

Compiler's Comments

1995 Amendment: Chapter 119 increased time for requisition of voter information pamphlet from 90 days to 110 days before an election; increased time for printing and shipping of voter information pamphlet from 30 days to 45 days before an election; and made minor changes in style.

Cross-References

Election Administrator as registration official, 13-1-301.

Part 5

Election Procedure

13-27-501. Secretary of state to certify ballot form — abbreviated ballot. (1) The secretary of state shall furnish to the official of each county responsible for preparation and printing of the ballots, at the same time as he certifies the names of the persons who are candidates for offices to be filled at the election, a certified copy of the form in which each ballot issue to be voted on by the people at that election is to appear on the ballot.

(2) Except as provided in subsection (4), the secretary of state shall list for each issue:

(a) the number;

(b) the method of placement on the ballot;

(c) the title;

(d) the attorney general's explanatory statement if applicable;

(e) the fiscal statement if applicable; and

(f) the statements of the implication of a vote for or against the issue that are to be placed beside the diagram for marking the ballot.

(3) When required to do so, the secretary of state shall use for each ballot issue the title of the legislative act or legislative constitutional proposal or the title provided by the attorney general or district court. Following the number of the ballot issue, the secretary of state, when required to do so, shall include one of the following statements to identify why the issue has been placed on the ballot:

(a) an act referred by the legislature;

(b) an amendment to the constitution proposed by the legislature;

(c) an act of the legislature referred by referendum petition; or

(d) a law or constitutional amendment proposed by initiative petition.

(4) The county election administrator may, at least 14 days prior to the deadline for ballot certification by the secretary of state, request in writing that he be furnished an abbreviated form of the certified ballot. The secretary of state shall furnish to all counties from which he has received such a request a certified ballot containing only the information in subsections (2)(a), (2)(e), and (2)(f). If the county election administrator requests that the abbreviated ballot be prepared, copies of the information contained in subsections (2)(a) through (2)(f) must be distributed to each elector by an election judge as the elector enters the polling place.

History: En. 37-135 by Sec. 21, Ch. 342, L. 1977; R.C.M. 1947, 37-135(1); amd. Sec. 15, Ch. 400, L. 1979; amd. Sec. 5, Ch. 336, L. 1981; amd. Sec. 1, Ch. 669, L. 1983; (4)En. Sec. 2, Ch. 669, L. 1983.

Cross-References

Role of Secretary of State, Title 13, ch. 1, part 2.

Title of ballot issue, 13-27-312, 13-27-316.

13-27-502. Preparation of ballots by county officials. Each of the county officials responsible for the preparation and printing of the ballots shall print the ballot issues on the official ballot in the form and order in which the issues have been certified by the secretary of state. All ballot issues shall be placed on the official ballot prescribed by 13-12-207, 13-12-212, and 13-17-206 unless specific written approval by the secretary of state for placing the ballot issues on a separate ballot is received by the official responsible for printing the ballot. The secretary of state may issue such approval only when the number of issues to be voted on at an election makes it impractical to print the entire ballot, including the ballot issues, on the official ballot as prescribed by 13-12-207, 13-12-212, and 13-17-206.

History: En. 37-135 by Sec. 21, Ch. 342, L. 1977; R.C.M. 1947, 37-135(2); amd. Sec. 16, Ch. 400, L. 1979; amd. Sec. 54, Ch. 575, L. 1981.

13-27-503. Determination of result of election. The votes on ballot issues shall be counted, canvassed, and returned by the regular boards of judges, clerks, and officers as votes for candidates are counted, canvassed, and returned. The abstract of votes on ballot issues shall be prepared and returned to the secretary of state in the manner provided by 13-15-501 for abstract of votes for state officers. The board of state canvassers shall proceed within 20 days after the election at which such ballot issues are voted upon and, at the same time as the votes for state officers are canvassed, canvass the votes given for each ballot issue. The secretary of state, as secretary of the board of state canvassers, shall prepare and file in his office a statement of the canvass, giving the number and title of each issue, the whole number of votes cast in the state for and against each ballot issue, and the effective date of each ballot issue approved by a majority of those voting on the issue. The secretary of state shall transmit a certified copy of the statement of the canvass to the governor.

History: En. 37-136 by Sec. 22, Ch. 342, L. 1977; R.C.M. 1947, 37-136(1); amd. Sec. 55, Ch. 575, L. 1981.

Cross-References

Result of elections, Art. IV, sec. 5, Mont. Const.

Procedure for vote counting, Title 13, ch. 15.

Effective date of ballot issues, 13-27-105.

13-27-504. Copy of approved issues to be sent to legislative services division. The secretary of state shall send a certified copy of all ballot issues that have been approved by a majority of those voting on the issue and a copy of the statement of the canvass to the legislative services division at the same time that a certified copy of the statement of the canvass is transmitted to the governor.

History: En. 37-136 by Sec. 22, Ch. 342, L. 1977; R.C.M. 1947, 37-136(2); amd. Sec. 55, Ch. 545, L. 1995.

Compiler's Comments

1995 Amendment: Chapter 545 near middle substituted "legislative services division" for "executive director of the legislative council"; and made minor changes in style. Amendment effective July 1, 1995.

Cross-References

Publication and updating of code — Code Commissioner, Title 1, ch. 11.

Legislative Council and publication of laws, Title 5, ch. 11.

CHAPTERS 28 THROUGH 34

RESERVED

CHAPTER 35

ELECTION AND CAMPAIGN PRACTICES AND CRIMINAL PROVISIONS

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13-35-226. Unlawful acts of employers and employees.
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13-35-228. Prohibition of salary increase contribution.
13-35-229. Repealed.
13-35-230. Repealed.
13-35-231. Unlawful for political party to endorse judicial candidate.
13-35-232. Repealed.
13-35-233. Solicitation of votes on election day.
13-35-234. Political criminal libel — misrepresenting voting records.
13-35-235. Incorrect election procedures information.

Part 3 — Code of Fair Campaign Practices

13-35-301. Adoption of code of fair campaign practices.
13-35-302. Candidates to be given opportunity to subscribe to campaign practices code.

Chapter Cross-References

Elected official's business disclosure statement, 2-2-106.

Montana Recall Act, Title 2, ch. 16, part 6.

Promise of support or opposition at future election by lobbyist, 5-7-102.

City officers and employees — political activity, 7-3-1254, 7-3-4256, 7-3-4265.

Role and duties of County Clerk and Recorder, 7-4-2611.

Definitions applicable to this chapter, 13-1-101.

Commissioner of Political Practices responsible for investigating alleged violations of this chapter, 13-37-111.

Prosecution of violations by Commissioner, 13-37-113.

Power of County Attorney to investigate violations of this chapter, 13-37-125.

Bribery and corrupt influence, Title 45, ch. 7, part 1.

Limitation on political activity of employee of Department of Fish, Wildlife, and Parks, 87-1-204.

Part 1
General Provisions

13-35-101. Election code not to supersede criminal code — statute of limitations. (1) The penalty provisions of the election laws of this state are intended to supplement and not to supersede the provisions of the Montana Criminal Code.

(2) Unless otherwise provided, the general time limitations for prosecutions for violations of the election laws are those specified in 45-1-205.

History: En. 23-47-101 by Sec. 1, Ch. 334, L. 1977; R.C.M. 1947, 23-47-101.

Cross-References

Political contributions of insurers prohibited, 33-18-305.

Montana Criminal Code, Title 45.

13-35-102. Trivial benefits not covered by criminal provisions. It is not the intent of the election laws of this state to criminalize activities involving trivial benefits incidental to the campaign process which involve no substantial risk of undermining the election process.

History: En. 23-47-102 by Sec. 2, Ch. 334, L. 1977; R.C.M. 1947, 23-47-102.

13-35-103. Violations as misdemeanor. A person who knowingly violates a provision of the election laws of this state for which no other penalty is specified is guilty of a misdemeanor.

History: En. 23-47-103 by Sec. 3, Ch. 334, L. 1977; R.C.M. 1947, 23-47-103.

Cross-References

"Knowingly" and "misdemeanor" defined, 45-2-101.

Misdemeanor penalty, 46-18-212.

13-35-104. Attempt as a violation. An attempt, as defined in 45-4-103, to violate a provision of the election laws of this state is itself a violation of the election laws and is punishable as provided in 45-4-103.

History: En. 23-47-104 by Sec. 4, Ch. 334, L. 1977; R.C.M. 1947, 23-47-104.

13-35-105. Aiding and abetting. A person who is legally accountable, as provided in 45-2-302, for the conduct of another which violates a provision of the election laws of this state is also guilty of a violation of that provision.

History: En. 23-47-105 by Sec. 5, Ch. 334, L. 1977; R.C.M. 1947, 23-47-105.

13-35-106. Ineligibility to hold office because of conviction. In addition to all other penalties prescribed by law:

(1) a candidate who is convicted of violating any provision of this title, except 13-35-207(9), is ineligible to be a candidate for any public office in the state of Montana until his final discharge from state supervision;

(2) a campaign treasurer who is convicted of violating any provision of this title, except 13-35-207(9), is ineligible to be a candidate for any public office or to hold the position of campaign treasurer in any campaign in the state of Montana until his final discharge from state supervision;

(3) if an elected official or a candidate is adjudicated to have violated any provision of this title, except 13-35-207(9), he shall be removed from nomination or office, as the case may be, even though he was regularly nominated or elected.

History: En. 23-47-106 by Sec. 6, Ch. 334, L. 1977; R.C.M. 1947, 23-47-106; amd. Sec. 215, Ch. 571, L. 1979.

Cross-References

Salaries withheld when title contested, 2-16-202.

Vacancy created by removal, Title 2, ch. 16, part 5.

Definition of "candidate" and "public office", 13-1-101.

Removal for violation of Title 13, ch. 37, 13-37-130.

13-35-107. Voiding election. (1) If a court finds that the violation of any provision of this title by any person probably affected the outcome of any election, the result of that election may be held void and a special election held within 75 days of that finding. If the violation occurred during a primary election, the court may direct the selection of a new candidate according to the provisions of state law relating to the filling of vacancies on the general election ballot. Except as provided in subsection (2), an action to void an election shall be commenced within 1 year of the date of the election in question.

(2) An action to void a bond election shall be commenced within 60 days of the date of the election in question.

History: En. 23-47-107 by Sec. 7, Ch. 334, L. 1977; R.C.M. 1947, 23-47-107; amd. Sec. 216, Ch. 571, L. 1979; amd. Sec. 38, Ch. 250, L. 1985.

Cross-References

Vacancy created by declaring election void, 2-16-501.

Procedure for filling vacancies on general election ballot, 13-10-327.

13-35-108. Powers of district court. In any action brought under the election laws of this state, the appropriate district court may enjoin any person to prevent the doing of any prohibited act or to compel the performance of any act required by the election laws.

History: En. 23-47-108 by Sec. 8, Ch. 334, L. 1977; R.C.M. 1947, 23-47-108.

Cross-References

Injunctions, Title 27, ch. 19.

Part 2

Specific Provisions

Part Cross-References

Elected official's business disclosure statement, 2-2-106.

Ineligibility to hold public office because of conviction, 13-35-106.

Voiding election under certain circumstances, 13-35-107.

Political contributions of insurers prohibited, 33-18-305.

13-35-201. Electors and ballots. (1) An elector may not show the contents of his ballot to anyone after it is marked. No elector may place any mark upon the ballot by which it may be identified as the one voted by him.

(2) An elector may not receive a ballot from any person other than an election judge and may not vote any ballot except one received from an election judge. No person other than an election judge may deliver a ballot to an elector.

(3) No person may solicit an elector to show his ballot after it is marked.

(4) An elector who does not vote a ballot delivered to him shall, before leaving the polling place, return the ballot to an election judge.

History: En. 23-47-109 by Sec. 9, Ch. 334, L. 1977; R.C.M. 1947, 23-47-109.

Cross-References

Secret ballot, Art. IV, sec. 1, Mont. Const.

Warning notice to be posted at polling place, 13-13-113.

Violation as misdemeanor, 13-35-103.

13-35-202. Conduct of election officials and election judges. An election officer or judge of an election may not:

(1) deposit in a ballot box a ballot on which the official stamp, as provided by law, does not appear;

(2) prior to putting the ballot of an elector in the ballot box, attempt to find out any name on the ballot or open or examine the folded ballot of an elector;

(3) look at any mark made by the elector upon the ballot;

(4) make or place any mark or device on any folded ballot with the intent to ascertain how the elector has voted;

(5) allow any individual other than the elector to be present at the marking of the ballot except as provided in 13-13-118 and 13-13-119; or

(6) make a false statement in a certificate regarding affirmation.

History: En. 23-47-110 by Sec. 10, Ch. 334, L. 1977; R.C.M. 1947, 23-47-110; amd. Sec. 217, Ch. 571, L. 1979.

Cross-References

Secret ballot, Art. IV, sec. 1, Mont. Const.

Warning notice to be posted at polling place, 13-13-113.

Indicating challenged elector not a violation, 13-13-311.

Violation as misdemeanor, 13-35-103.

13-35-203. Interference with officials. A person who, in any manner, interferes with the officers holding an election or conducting a canvass so as to prevent the election or canvass from being fairly held and lawfully conducted is guilty of obstruction of a public servant and is punishable as provided in 45-7-302.

History: En. 23-47-111 by Sec. 11, Ch. 334, L. 1977; R.C.M. 1947, 23-47-111.

13-35-204. Official misconduct. A person charged with performance of any duty under the provisions of the election laws of this state is guilty of official misconduct and is punishable as provided in 45-7-401 whenever the person:

(1) knowingly neglects or refuses to perform that duty; or

(2) knowingly and fraudulently acts, in his official capacity, in contravention or violation of any provision of the election laws.

History: En. 23-47-112 by Sec. 12, Ch. 334, L. 1977; R.C.M. 1947, 23-47-112.

13-35-205. Tampering with election records and information. A person is guilty of tampering with public records or information and is punishable as provided in 45-7-208 whenever the person:

(1) suppresses any declaration or certificate of nomination which has been filed;

(2) purposely causes the vote on a machine to be incorrectly recorded as to the candidate or ballot issue voted on;

(3) in an election return, knowingly adds to or subtracts from the votes actually cast at the election;

(4) changes any ballot after the same has been deposited in the ballot box or adds any ballot to those legally polled at an election, either before or after the ballots have been counted, with the purpose of changing the result of the election;

(5) causes any name to be placed on the registry lists other than in the manner provided by this title; or

(6) changes a poll list or checklist.

History: En. 23-47-113 by Sec. 13, Ch. 334, L. 1977; R.C.M. 1947, 23-47-113.

Cross-References

Declaration for nomination, 13-10-201.

Certificates of nomination or election, 13-15-406, 13-15-504.

13-35-206. Injury to election equipment, materials, and records. A person is guilty of criminal mischief or tampering with public records and information, as appropriate, and is punishable as provided in 45-6-101 or 45-7-208, as applicable, whenever the person:

(1) prior to or on election day, knowingly defaces or destroys any list of candidates posted in accordance with the provisions of the law;

(2) during an election:

(a) removes or defaces the cards printed for the instruction of the voters; or

(b) removes or destroys any of the supplies or other conveniences placed in the booths or compartments for the purpose of enabling a voter to prepare his ballot;

(3) removes any ballots from the polling place before the closing of the polls with the purpose of changing the result of the election;

(4) carries away or destroys any poll lists, checklists, ballots, or ballot boxes for the purpose of disrupting or invalidating an election;

(5) knowingly detains, mutilates, alters, or destroys any election returns;

(6) mutilates, secretes, destroys, or alters election records, except as provided by law;

(7) tampers with, disarranges, defaces, injures, or impairs a voting machine;

(8) mutilates, injures, or destroys any ballot or appliance used in connection with a voting machine; or

(9) fraudulently defaces or destroys a declaration or certificate of nomination.

History: En. 23-47-114 by Sec. 14, Ch. 334, L. 1977; R.C.M. 1947, 23-47-114.

Cross-References

Posting of election lists and instruction cards, 13-13-112.

Warning notice to be posted at polling place, 13-13-113.

13-35-207. Deceptive election practices. A person is guilty of false swearing, unsworn falsification, or tampering with public records or information, as appropriate, and is punishable as provided in 45-7-202, 45-7-203, or 45-7-208, as applicable, whenever the person:

(1) falsely represents his name or other information required upon his registry card and causes registration with the card;

(2) signs a registry card knowingly witnessing any false or misleading statement;

(3) knowingly causes a false statement, certificate, or return of any kind to be signed;

(4) falsely makes a declaration or certificate of nomination;

(5) files or receives for filing a declaration or certificate of nomination knowing that all or part of the declaration or certificate is false;

(6) forges or falsely makes the official endorsement of a ballot;

(7) forges or counterfeits returns of an election purporting to have been held at a precinct, municipality, or ward where no election was in fact held;

(8) knowingly substitutes forged or counterfeit returns of election in place of the true returns for a precinct, municipality, or ward where an election was held;

(9) signs a name other than his own to a petition, signs more than once for the same measure, or signs a petition while not being a qualified elector of the state; or

(10) makes a false oath or affidavit where an oath or affidavit is required by law.

History: En. 23-47-115 by Sec. 15, Ch. 334, L. 1977; R.C.M. 1947, 23-47-115; amd. Sec. 218, Ch. 571, L. 1979.

Cross-References

Declaration for nomination, 13-10-201.

Indicating challenged elector not a violation, 13-13-311.

Criminal provisions relating to signing ballot issues, 13-27-106.

13-35-208. Deceiving an elector. A person who deceives an elector voting under 13-13-118 or 13-13-119 is guilty of a misdemeanor.

History: En. 23-47-116 by Sec. 16, Ch. 334, L. 1977; R.C.M. 1947, 23-47-116; amd. Sec. 56, Ch. 575, L. 1981.

Cross-References

Misdemeanor penalty, 46-18-212.

13-35-209. Fraudulent registration. (1) No person may knowingly cause, procure, or allow himself to be registered in the official register of any election district of any county knowing himself not to be entitled to such registration.

(2) No person may falsely personate another and cause the person so personated to be registered.

(3) When, on the trial of the person charged with any offense under the provisions of this section, it appears in evidence that the accused stands registered in the register of any county without being qualified for such registration, the court shall order such registration canceled.

History: En. 23-47-117 by Sec. 17, Ch. 334, L. 1977; R.C.M. 1947, 23-47-117.

Cross-References

Abuse of electoral process, Art. IV, sec. 3, Mont. Const.

Registration, Title 13, ch. 2.

Violation as misdemeanor, 13-35-103.

13-35-210. Limits on voting rights. (1) No person may vote who is not entitled to vote. No person may vote more than once at an election.

(2) No person may, for any election, apply for a ballot in the name of some other person, whether it be the name of a living, dead, or fictitious person.

History: En. 23-47-118 by Sec. 18, Ch. 334, L. 1977; R.C.M. 1947, 23-47-118.

Cross-References

Abuse of electoral process, Art. IV, sec. 3, Mont. Const.

Qualifications of voter, 13-1-111.

Violation as misdemeanor, 13-35-103.

13-35-211. Electioneering — soliciting information from electors. (1) No person may do any electioneering on election day within any polling place or any building in which an election is being held or within 200 feet thereof, which aids or promotes the success or defeat of any candidate or ballot issue to be voted upon at the election.

(2) No person may buy, sell, give, wear, or display at or about the polls on an election day any badge, button, or other insignia which is designed or tends to aid or promote the success or defeat of any candidate or ballot issue to be voted upon at the election.

(3) No person within a polling place or any building in which an election is being held may solicit from an elector, before or after he has marked his ballot and returned it to an election judge, information as to whether the elector intends to vote or has voted for or against a candidate or ballot issue.

History: En. 23-47-119 by Sec. 19, Ch. 334, L. 1977; R.C.M. 1947, 23-47-119; amd. Sec. 219, Ch. 571, L. 1979; amd. Sec. 1, Ch. 192, L. 1985; amd. Sec. 1, Ch. 216, L. 1989.

Cross-References

Warning notice to be posted at polling place, 13-13-113.

Violation as misdemeanor, 13-35-103.

13-35-212. Repealed. Sec. 407, Ch. 571, L. 1979.

History: En. 23-47-120 by Sec. 20, Ch. 334, L. 1977; R.C.M. 1947, 23-47-120.

13-35-213. Preventing public meetings of electors. (1) A person who, by threats, intimidations, or violence, willfully hinders or prevents electors from assembling in public meeting for the consideration of public questions is guilty of a misdemeanor.

(2) A person who willfully disturbs or breaks up a public meeting of electors or others, lawfully being held for the purpose of considering public questions, or a public school meeting is guilty of a misdemeanor.

History: En. 23-47-121 by Sec. 21, Ch. 334, L. 1977; R.C.M. 1947, 23-47-121.

Cross-References

Misdemeanor penalty, 46-18-212.

13-35-214. Illegal influence of voters. No person, directly or indirectly, by himself or by any other person on his behalf, for any election, to or for any person on behalf of any elector or to or for any person, in order to induce any elector to vote or refrain from voting or to vote for or against any particular candidate, political party ticket, or ballot issue, may:

(1) give, lend, agree to give or lend, offer, or promise any money, liquor, or valuable consideration or promise or endeavor to procure any money, liquor, or valuable consideration;

(2) promise to appoint another person or promise to secure or aid in securing the appointment, nomination, or election of another person to a public or private position or employment or to a position of honor, trust, or emolument, in order to aid or promote his nomination or election, except that he may publicly announce or define what is his choice or purpose in relation to an election in which he may be called to take part, if elected.

History: En. 23-47-122 by Sec. 22, Ch. 334, L. 1977; R.C.M. 1947, 23-47-122.

Cross-References

City elections — improper influence of voters, 7-3-4265.

Warning notice to be posted at polling place, 13-13-113.

Violation as misdemeanor, 13-35-103.

Bribery in official and political matters, 45-7-101.

Threats and other improper influence in official and political matters, 45-7-102.

13-35-215. Illegal consideration for voting. No person, directly or indirectly, by himself or by any other person in his behalf, may:

(1) before or during any election, for voting or agreeing to vote or for refraining or agreeing to refrain from voting at the election or for inducing another to do so:

(a) receive, agree, or contract for any money, gift, loan, liquor, valuable consideration, office, place, or employment for himself or any other person; or

(b) approach any candidate or agent or person representing or acting on behalf of any candidate and ask for or offer to agree or contract for any money, gift, loan, liquor, valuable consideration, office, place, or employment for himself or any other person;

(2) after an election, for having voted or refrained from voting or having induced any other person to vote or refrain from voting at the election:

(a) receive any money, gift, loan, valuable consideration, office, place, or employment; or

(b) approach any candidate or any agent or person representing or acting on behalf of any candidate and ask for or offer to receive any money, gift, loan, liquor, valuable consideration, office, place, or employment for himself or any other person.

History: En. 23-47-123 by Sec. 23, Ch. 334, L. 1977; R.C.M. 1947, 23-47-123; amd. Sec. 220, Ch. 571, L. 1979.

Cross-References

Violation as misdemeanor, 13-35-103.

Bribery in official and political matters, 45-7-101.

13-35-216. Repealed. Sec. 407, Ch. 571, L. 1979.

History: En. 23-47-124 by Sec. 24, Ch. 334, L. 1977; R.C.M. 1947, 23-47-124.

13-35-217. Officers not to influence voter. No officer, while acting in his official capacity, may, by menace, reward, or promise of reward, induce or attempt to induce any elector to cast a vote contrary to his original intention or desire.

History: En. 23-47-125 by Sec. 25, Ch. 334, L. 1977; R.C.M. 1947, 23-47-125; amd. Sec. 57, Ch. 575, L. 1981.

Cross-References

Warning notice to be posted at polling place, 13-13-113.

Violation as misdemeanor, 13-35-103.

13-35-218. Coercion or undue influence of voters. (1) No person, directly or indirectly, by himself or any other person in his behalf, in order to induce or compel a person to vote or refrain from voting for any candidate, the ticket of any political party, or any ballot issue before the people, may:

(a) use or threaten to use any force, coercion, violence, restraint, or undue influence against any person; or

(b) inflict or threaten to inflict, by himself or any other person, any temporal or spiritual injury, damage, harm, or loss upon or against any person.

(2) No person who is a minister, preacher, priest, or other church officer or who is an officer of any corporation or organization, religious or otherwise, may, other than by public speech or print, urge, persuade, or command any voter to vote or refrain from voting for or against any candidate, political party ticket, or ballot issue submitted to the people because of his religious duty or the interest of any corporation, church, or other organization.

(3) No person may, by abduction, duress, or any fraudulent contrivance, impede or prevent the free exercise of the franchise by any voter at any election or thereby compel, induce, or prevail upon any elector to give or to refrain from giving his vote at any election.

(4) No person may, in any manner, interfere with a voter lawfully exercising his right to vote at an election so as to prevent the election from being fairly held and lawfully conducted.

(5) No person on election day may obstruct the doors or entries of any polling place or engage in any solicitation of a voter within the room where votes are being cast or elsewhere in any manner which in any way interferes with the election process or obstructs the access of voters to or from the polling place.

History: En. 23-47-126 by Sec. 26, Ch. 334, L. 1977; R.C.M. 1947, 23-47-126; amd. Sec. 1, Ch. 561, L. 1981.

Cross-References

Warning notice to be posted at polling place, 13-13-113.

Violation as misdemeanor, 13-35-103.

Threats and improper influence in political matters, 45-7-102.

13-35-219. Repealed. Sec. 407, Ch. 571, L. 1979.

History: En. 23-47-127 by Sec. 27, Ch. 334, L. 1977; R.C.M. 1947, 23-47-127.

13-35-220. Bribing members of political gatherings. (1) No person may give or offer a bribe to any officer or member of any legislative caucus, political convention, or political gathering of any kind held for the purpose of nominating candidates for offices of honor, trust, or profit in this state, with intent to influence the person to whom such bribe is given or offered to be more favorable to one candidate than another. No person who is a member of any of the bodies mentioned in this section may receive or offer to receive any such bribe.

(2) A violation of this section is punishable as provided in 45-7-101(3).

History: En. 23-47-128 by Sec. 28, Ch. 334, L. 1977; R.C.M. 1947, 23-47-128.

Cross-References

Definition of "bribe", 1-1-207.

13-35-221. Improper nominations. (1) No person may pay or promise valuable consideration to another, in any manner or form, for the purpose of inducing him to be or to refrain from or to cease being a candidate, and no person may solicit or receive any payment or promise from another for such purpose.

(2) No person, in consideration of any gift, loan, offer, promise, or agreement, as mentioned in subsection (1), may:

(a) allow himself to be nominated or refuse to allow himself to be nominated as a candidate at an election;

(b) become, by himself or in combination with any other person or persons, a candidate for the purpose of defeating the nomination or election of any other person, without a bona fide intent to obtain the office; or

(c) withdraw if he has been so nominated.

(3) Upon complaint made to any district court, the judge shall issue a writ of injunction restraining the officer whose duty it is to prepare official ballots for a nominating election from placing the name of a person thereon as a candidate for nomination to any office if the judge is convinced that:

(a) the person has sought the nomination or seeks to have his name presented to the voters as a candidate for nomination by any political party for any mercenary or venal consideration or motive; and

(b) his candidacy for the nomination is not in good faith.

History: En. 23-47-129 by Sec. 29, Ch. 334, L. 1977; R.C.M. 1947, 23-47-129.

Cross-References

Violation as misdemeanor, 13-35-103.

13-35-222. Repealed. Sec. 407, Ch. 571, L. 1979.

History: En. 23-47-130 by Sec. 30, Ch. 334, L. 1977; R.C.M. 1947, 23-47-130.

13-35-223. Repealed. Sec. 407, Ch. 571, L. 1979.

History: En. 23-47-131 by Sec. 31, Ch. 334, L. 1977; R.C.M. 1947, 23-47-131.

13-35-224. Repealed. Sec. 407, Ch. 571, L. 1979.

History: En. 23-47-132 by Sec. 32, Ch. 334, L. 1977; R.C.M. 1947, 23-47-132.

13-35-225. Election materials not to be anonymous. (1) Whenever a person makes an expenditure for the purpose of financing communications advocating the success or defeat of a candidate, political party, or ballot issue through any broadcasting station, newspaper, magazine, outdoor advertising facility, direct mailing, poster, handbill, bumper sticker, or other form of general political advertising, the communication must clearly and conspicuously state the name and address of the person who made or financed the expenditure for the communication, including in the case of a political committee, the name and address of the treasurer. Communications in a partisan election financed by a candidate or a political committee organized on the candidate's behalf must state the candidate's party affiliation or include the party symbol.

(2) If a document or other article of advertising is too small for the requirements of subsection (1) to be conveniently included, the person financing the communication shall file a copy of the article with the commissioner, together with the required information, prior to its public distribution.

(3) If information required in subsection (1) is inadvertently omitted or not printed, upon discovering the omission, the person financing the communication shall file notification of the omission with the commissioner within 5 days and make every reasonable effort to bring the material into compliance with subsection (1).

History: En. 23-47-133 by Sec. 33, Ch. 334, L. 1977; R.C.M. 1947, 23-47-133; amd. Sec. 221, Ch. 571, L. 1979; amd. Sec. 1, Ch. 368, L. 1987; amd. Sec. 1, Ch. 23, L. 1991; amd. Sec. 1, Ch. 482, L. 1991.

Cross-References

Violation as misdemeanor, 13-35-103.

Liability in civil action for violation, 13-37-128.

13-35-226. Unlawful acts of employers and employees. (1) It is unlawful for any employer, in paying employees the salary or wages due them, to include with their pay the name of any candidate or any political mottoes, devices, or arguments containing threats or promises, express or implied, calculated or intended to influence the political opinions or actions of the employees. It is unlawful for an employer to exhibit in a place where the employer's workers or employees may be working any handbill or placard containing any threat, promise, notice, or information that, in case any particular ticket or political party, organization, or candidate is elected, work in the employer's place or establishment will cease, in whole or in part, or will be continued or increased; the employer's place or establishment will be closed; the salaries or wages of the workers or employees will be reduced or increased; or other threats or promises, express or implied, intended or calculated to influence the political opinions or actions of the employer's workers or employees. This section applies to corporations, individuals, and public officers and employees.

(2) A person may not attempt to coerce, command, or require a public employee to support or oppose any political committee, the nomination or election of any person to public office, or the passage of a ballot issue.

(3) A public employee may not solicit support for or opposition to any political committee, the nomination or election of any person to public office, or the passage of a ballot issue while on the job or at the place of employment. However, subject to 2-2-121, this section is not intended to restrict the right of a public employee to express personal political views.

(4) Any person who violates the provisions of this section shall be fined an amount not to exceed $1,000, be imprisoned in the county jail for a term not to exceed 6 months, or both, for each separate offense.

History: En. 23-47-134 by Sec. 34, Ch. 334, L. 1977; R.C.M. 1947, 23-47-134; amd. Sec. 222, Ch. 571, L. 1979; amd. Sec. 1, Ch. 655, L. 1983; amd. Sec. 13, Ch. 562, L. 1995.

Compiler's Comments

1995 Amendment: Chapter 562 in (3) substituted "subject to 2-2-121" for "nothing in"; and made minor changes in style. Amendment effective July 1, 1995.

13-35-227. Prohibited contributions from corporations. (1) A corporation may not make a contribution or an expenditure in connection with a candidate or a political committee which supports or opposes a candidate or a political party.

(2) A person, candidate, or political committee may not accept or receive a corporate contribution described in subsection (1).

(3) This section does not prohibit the establishment or administration of a separate, segregated fund to be used for making political contributions or expenditures if the fund consists only of voluntary contributions solicited from an individual who is a shareholder, employee, or a member of the corporation.

(4) A person who violates this section is subject to the civil penalty provisions of 13-37-128.

History: En. Sec. 25, Init. Act, Nov. 1912; re-en. Sec. 10790, R.C.M. 1921; re-en. Sec. 10790, R.C.M. 1935; Sec. 94-1444, R.C.M. 1947; redes. 23-4744 by Sec. 29, Ch. 513, L. 1973; amd. Sec. 1, Ch. 296, L. 1975; R.C.M. 1947, 23-4744; amd. Sec. 1, Ch. 404, L. 1979.

Cross-References

Limitations on receipts from political committees, 13-37-218.

13-35-228. Prohibition of salary increase contribution. A corporation may not increase the salary of any officer or employee or give an emolument to any officer, employee, or other person with the intention that the increase in salary, the emolument, or any part thereof be contributed to support or oppose a candidate or ballot issue.

History: En. 23-47-135 by Sec. 35, Ch. 334, L. 1977; R.C.M. 1947, 23-47-135.

Cross-References

Violation as misdemeanor, 13-35-103.

Civil liability for violation, 13-37-128.

13-35-229. Repealed. Sec. 407, Ch. 571, L. 1979.

History: En. 23-47-136 by Sec. 36, Ch. 334, L. 1977; R.C.M. 1947, 23-47-136.

13-35-230. Repealed. Sec. 407, Ch. 571, L. 1979.

History: En. 23-47-137 by Sec. 37, Ch. 334, L. 1977; R.C.M. 1947, 23-47-137.

13-35-231. Unlawful for political party to endorse judicial candidate. A political party may not endorse, contribute to, or make an expenditure to support or oppose a judicial candidate.

History: En. 23-47-138 by Sec. 38, Ch. 334, L. 1977; R.C.M. 1947, 23-47-138; amd. Sec. 223, Ch. 571, L. 1979.

Cross-References

Election of Supreme Court Justices, 3-2-101, 3-2-102.

Election of District Court Judges, 3-5-201, 3-5-202.

Election of Justice of the Peace, 3-10-201.

Violation as misdemeanor, 13-35-103.

13-35-232. Repealed. Sec. 407, Ch. 571, L. 1979.

History: En. 23-47-139 by Sec. 39, Ch. 334, L. 1977; R.C.M. 1947, 23-47-139.

13-35-233. Solicitation of votes on election day. (1) It is unlawful for a person or a political committee to place an advertisement supporting or opposing a candidate or a ballot issue for use on election day. Failure to remove billboards, yard signs, or posters on election day is not considered a violation.

(2) A person convicted of solicitation of votes on election day is guilty of a misdemeanor and shall be imprisoned in the county jail for a term not to exceed 6 months or be fined not to exceed $1,000, or both.

History: En. Sec. 1, Ch. 539, L. 1979.

13-35-234. Political criminal libel — misrepresenting voting records. (1) It is unlawful for any person to make or publish any false statement or charge reflecting on any candidate's character or morality or to knowingly misrepresent the voting record or position on public issues of any candidate. A person making such a statement or representation with knowledge of its falsity or with a reckless disregard as to whether it is true or not is guilty of a misdemeanor.

(2) In addition to the misdemeanor penalty of subsection (1), a successful candidate who is adjudicated guilty of violating this section may be removed from office as provided in 13-35-106 and 13-35-107.

History: En. Sec. 2, Ch. 539, L. 1979; amd. Sec. 1, Ch. 545, L. 1983.

Cross-References

When owner of radio station not held responsible for defamatory broadcast, 27-1-811.

Misdemeanor penalty, 46-18-212.

13-35-235. Incorrect election procedures information. (1) A person may not knowingly or purposely disseminate to any elector information about election procedures that is incorrect or misleading or gives the impression that the information has been officially disseminated by an election administrator.

(2) A person who violates this section is guilty of a misdemeanor.

History: En. Sec. 1, Ch. 397, L. 1989.

Cross-References

Misdemeanor penalty, 46-18-212.

Part 3

Code of Fair Campaign Practices

13-35-301. Adoption of code of fair campaign practices. The following code of fair campaign practices is adopted by Montana:

"There are basic principles of decency, honesty, and fair play that every candidate for public office in the United States has a moral obligation to observe and uphold, in order that, after vigorously contested but fairly conducted campaigns, our citizens may exercise their constitutional right to a free and untrammeled choice and the will of the people may be fully and clearly expressed on the issues before the country. Therefore:

I will conduct my campaign in the best American tradition, discussing the issues as I see them, presenting my record and policies with sincerity and frankness, and criticizing without fear or favor the record and policies of my opponent and his party which merit such criticism.

I will defend and uphold the right of every qualified American voter to full and equal participation in the electoral process.

I will conduct my campaign without the use of personal vilification, character defamation, whispering campaigns, libel, slander, or scurrilous attacks on my opposition or his personal or family life.

I will not use campaign material of any sort which misrepresents, distorts, or otherwise falsifies the facts, nor will I use malicious or unfounded accusations which aim at creating or exploiting doubts, without justification, as to the loyalty and patriotism of my opposition.

I will not make any appeal to prejudice based on race, sex, creed, or national origin.

I will not undertake or condone any dishonest or unethical practice which tends to corrupt or undermine our American system of free elections or which hampers or prevents the full and free expression of the will of the voters.

Insofar as is possible, I will immediately and publicly repudiate support deriving from any individual or group which resorts, on behalf of my candidacy or in opposition to that of my opponent, to the methods and tactics that I have pledged not to use or condone."

History: En. Sec. 1, Ch. 475, L. 1979.

13-35-302. Candidates to be given opportunity to subscribe to campaign practices code. (1) The commissioner of political practices shall prepare a form that sets forth the code of fair campaign practices provided for in 13-35-301 and a place for a candidate to sign the form and to indicate that the candidate endorses, subscribes to, and pledges to abide by the code.

(2) The commissioner shall send a copy of the form to each candidate required to file reports or other information with the commissioner. Signing the form is voluntary, and a failure or refusal to sign is not a violation of the election laws. A form must be sent for each election as soon as feasible. The signed form must be returned to the commissioner.

(3) Any candidate not required to file with the commissioner but wishing to subscribe to the code may obtain the form from the commissioner and may sign the form and deliver it to the commissioner.

History: En. Sec. 2, Ch. 475, L. 1979; amd. Sec. 1, Ch. 128, L. 1993.

CHAPTER 36

CONTESTS

Part 1 — General Provisions

13-36-101. Grounds for contest of nomination or election to public office.
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13-36-211. When nomination or election not to be vacated.
13-36-212. Declaration of result of election after rejection of illegal votes.

Chapter Cross-References

Salaries withheld during election contests, 2-16-202.

Role and duties of County Clerk and Recorder, 7-4-2611.

Challenges to local government bond elections, 7-7-105.

Definitions applicable to this chapter, 13-1-101.

Disposition of ballots and other election materials, 13-1-303.

Commissioner of Political Practices to investigate alleged violations of this chapter, 13-37-111.

Prosecution of violations of this chapter by Commissioner of Political Practices, 13-37-113.

Powers of County Attorney to investigate violations of this chapter, 13-37-125.

Part 1
General Provisions

13-36-101. Grounds for contest of nomination or election to public office. An elector may contest the right of any person to any nomination or election to public office for which the elector has the right to vote, for any of the following causes:

(1) on the ground of a deliberate, serious, and material violation of any provision of the law relating to nominations or elections;

(2) whenever the person whose right is contested was not, at the time of the election, eligible to such office;

(3) on account of illegal votes or an erroneous or fraudulent count or canvass of votes.

History: En. Sec. 45, Init. Act, Nov. 1912; re-en. Sec. 10810, R.C.M. 1921; re-en. Sec. 10810, R.C.M. 1935; Sec. 94-1464, R.C.M. 1947; redes. 23-4763 by Sec. 29, Ch. 513, L. 1973; amd. Sec. 59, Ch. 365, L. 1977; R.C.M. 1947, 23-4763; amd. Sec. 224, Ch. 571, L. 1979.

Cross-References

Definition of "elector" and "public office", 13-1-101.

Ineligibility to hold office because of conviction, 13-35-106.

When nomination or election not to be vacated, 13-36-211.

13-36-102. Time for commencing contest. (1) Five days or less after a candidate has been certified as nominated, a person wishing to contest the nomination to any public office shall give notice in writing to the candidate whose nomination he intends to contest, briefly stating the cause for the contest. The contestant shall make application to the district court in the county where the contest is to be had. The judge shall then set the time for the hearing. The contestant shall serve notice 3 days before the hearing is scheduled. The notice shall state the time and place of the hearing.

(2) Any action to contest the right of a candidate to be declared elected to an office or to annul and set aside such election or to remove from or deprive any person of an office of which he is the incumbent for any offense mentioned in this title must, unless a different time is stated, be commenced within 1 year after the day of election at which such offense was committed.

History: (1)En. Sec. 71, Ch. 368, L. 1969; amd. Sec. 23, Ch. 365, L. 1977; Sec. 23-3316, R.C.M. 1947; (2)En. Sec. 40, Init. Act, Nov. 1912; re-en. Sec. 10805, R.C.M. 1921; re-en. Sec. 10805, R.C.M. 1935; Sec. 94-1459, R.C.M. 1947; redes. 23-4759 by Sec. 29, Ch. 513, L. 1973; amd. Sec. 57, Ch. 365, L. 1977; Sec. 23-4759, R.C.M. 1947; R.C.M. 1947, 23-3316(1) thru (3), 23-4759; amd. Sec. 225, Ch. 571, L. 1979; amd. Sec. 58, Ch. 575, L. 1981.

Cross-References

Certification of nomination, 13-15-406, 13-15-507.

Application of Montana Rules of Civil Procedure, Rule 81(a), M.R.Civ.P. (see Title 25, ch. 20).

13-36-103. Court having jurisdiction of proceedings. An application for filing a statement, payment of a claim, or correction of an error or false recital in a filed statement or an action or proceeding to annul and set aside the election of any person declared elected to an office or to remove or deprive any person of his office for an offense mentioned in this title or any petition to excuse any person or candidate in accordance with the power of the court to excuse, as provided in 13-36-209, must be made or filed in the district court of the county in which the certificate, declaration, or acceptance of his nomination as a candidate for the office to which he is declared nominated or elected is filed or in which the incumbent resides.

History: En. Sec. 41, Init. Act, Nov. 1912; re-en. Sec. 10806, R.C.M. 1921; re-en. Sec. 10806, R.C.M. 1935; Sec. 94-1460, R.C.M. 1947; amd. and redes. 23-4760 by Sec. 25, Ch. 513, L. 1973; amd. Sec. 58, Ch. 365, L. 1977; R.C.M. 1947, 23-4760; amd. Sec. 226, Ch. 571, L. 1979.

13-36-104. Nomination contests. In the case of nomination contests, the judge of the district court shall hear and determine the case and make all necessary orders for the trial of the case and carrying his judgment into effect. The order of the judge shall express the will of a majority of the legal voters of the political party, as indicated by their votes, disregarding technicalities or errors in spelling. Each party is entitled to subpoenas. The registrar shall issue a certificate to the person declared nominated by the court. The certificate shall be conclusive evidence of the right of the person to hold the nomination.

History: En. Sec. 71, Ch. 368, L. 1969; amd. Sec. 23, Ch. 365, L. 1977; R.C.M. 1947, 23-3316(4) thru (6).

Cross-References

Application of Montana Rules of Civil Procedure, Rule 81(a), M.R.Civ.P. (see Title 25, ch. 20).

Part 2
Procedure

13-36-201. Contents of contest petition. Any petition contesting the right of any person to a nomination or election shall set forth the name of every person whose election is contested and the grounds of the contest. The petition shall not thereafter be amended, except by leave of the court.

History: **En. Sec. 48, Init. Act, Nov. 1912; re-en. Sec. 10813, R.C.M. 1921; re-en. Sec. 10813, R.C.M. 1935; Sec. 94-1467, R.C.M. 1947; redes. 23-4766 by Sec. 29, Ch. 513, L. 1973; R.C.M. 1947, 23-4766(part).**

Cross-References

Grounds for contest, 13-36-101.

13-36-202. Reception of illegal votes — allegations and evidence. When the reception of illegal votes is alleged as a cause of contest, it shall be sufficient to state generally that in one or more specified voting precincts illegal votes were given to the candidate whose nomination or election is contested which, if taken from him, will reduce the number of his legal votes below the number of legal votes given to some other candidate for the same office. No testimony shall be received of any illegal votes unless the party contesting such election delivers to the opposite party, at least 3 days before such trial, a written list of the number of illegal votes (and by whom given) which he intends to prove on such trial. This provision shall not prevent the contestant from offering evidence of illegal votes not included in such statement if he did not know and by reasonable diligence was unable to learn of such additional illegal votes (and by whom they were given) before delivering such written list.

History: **En. Sec. 47, Init. Act, Nov. 1912; re-en. Sec. 10812, R.C.M. 1921; re-en. Sec. 10812, R.C.M. 1935; Sec. 94-1466, R.C.M. 1947; redes. 23-4765 by Sec. 29, Ch. 513, L. 1973; R.C.M. 1947, 23-4765; amd. Sec. 227, Ch. 571, L. 1979.**

13-36-203. Form of complaint. (1) A petition or complaint filed under the provisions of this chapter shall be sufficient if it is substantially in the following form:

In the District Court of the
.... Judicial District,
for the County of ...., State of Montana.

A B (or A B and C D), Contestants,
vs.
E F, Contestee.

The petition of contestant (or contestants) above named alleges:

That an election was held (in the state, district, county, or city of ....), on the .... day of ...., A. D. 19.., for the (nomination of a candidate for) (or election of a) (state the office).

That .... and .... were candidates at said election, and the board of canvassers has returned the said .... as being duly nominated (or elected) at said election.

That contestant A B voted (or had a right to vote, as the case may be) at said election (or claims to have had a right to be returned as the nominee or officer elected or nominated at said election, or was a candidate at said election, as the case may be), and said contestant C D (here state in like manner the right of each contestant).

And said contestant (or contestants) further allege (here state the facts and grounds on which the contestants rely).

Wherefore, your contestants pray that it may be determined by the court that said .... was not duly nominated (or elected), and that said election was void or that said A B or C D, as the case may be, was duly nominated (or elected), and for such other and further relief as to the court may seem just and legal in the premises.

(2) Said complaint shall be verified by the affidavit of one of the petitioners in the manner required by law for the verification of complaints in civil cases.

History: En. Sec. 53, Init. Act, Nov. 1912; re-en. Sec. 10818, R.C.M. 1921; re-en. Sec. 10818, R.C.M. 1935; Sec. 94-1472, R.C.M. 1947; redes. 23-4771 by Sec. 29, Ch. 513, L. 1973; R.C.M. 1947, 23-4771.

Cross-References

Verification of pleadings, 25-4-203.

13-36-204. Bond required. Before any proceeding on the petition, the petitioner shall give bond to the state in such sum as the court may order, not exceeding $2,000, with not less than two sureties, who shall justify in the manner required of sureties on bail bonds, conditioned to pay all costs, disbursements, and attorney's fees that may be awarded against him if he shall not prevail.

History: En. Sec. 48, Init. Act, Nov. 1912; re-en. Sec. 10813, R.C.M. 1921; re-en. Sec. 10813, R.C.M. 1935; Sec. 94-1467, R.C.M. 1947; redes. 23-4766 by Sec. 29, Ch. 513, L. 1973; R.C.M. 1947, 23-4766(part).

13-36-205. Recovery of costs. In any contest, the prevailing party may recover his costs, disbursements, and reasonable attorney's fees. Costs, disbursements, and attorney's fees in all such cases shall be in the discretion of the court. In case judgment is rendered against the petitioner, it shall also be rendered against the sureties on the bond.

History: En. Sec. 48, Init. Act, Nov. 1912; re-en. Sec. 10813, R.C.M. 1921; re-en. Sec. 10813, R.C.M. 1935; Sec. 94-1467, R.C.M. 1947; redes. 23-4766 by Sec. 29, Ch. 513, L. 1973; R.C.M. 1947, 23-4766(part); amd. Sec. 228, Ch. 571, L. 1979.

Cross-References

Costs, Title 25, ch. 10.

13-36-206. Notice of filing — prompt hearing. On the filing of any such petition, the clerk shall immediately notify the judge of the court and issue a citation to the person whose nomination or office is contested, citing him to appear and answer not less than 3 or more than 7 days after the date of filing the petition. The court shall hear said cause, and every such contest shall take precedence over all other business on the court docket and shall be tried and disposed of with all convenient dispatch. The court shall always be deemed in session for the trial of such cases.

History: En. Sec. 48, Init. Act, Nov. 1912; re-en. Sec. 10813, R.C.M. 1921; re-en. Sec. 10813, R.C.M. 1935; Sec. 94-1467, R.C.M. 1947; redes. 23-4766 by Sec. 29, Ch. 513, L. 1973; R.C.M. 1947, 23-4766(part).

13-36-207. Hearing of contest. The petitioner (contestant) and the contestee may appear and produce evidence at the hearing, but no person other than the petitioner and contestee may be made a party to the proceedings on such petition and no person other than the parties and their attorneys may be heard thereon except by order of the court. If more than one petition is pending or the election of more than one person is contested, the court may in its discretion order the cases to be heard together and may apportion the costs, disbursements, and attorney's fees between them and shall finally determine all questions of law and fact, except that the judge may in his discretion impanel a jury to decide on questions of fact. In the case of nominations or elections other than for federal congressional offices, the court shall immediately certify its decision to the governing body or official issuing certificates of nomination or election and the governing body or official shall thereupon issue certificates of nomination or election to the person or persons entitled thereto by the court's decision. If judgment of ouster against a defendant is rendered, the nomination or office shall be by the judgment declared vacant, except as provided in 13-36-212, and shall thereupon be filled by a new election or by appointment as may be provided by law regarding vacancies in such nomination or office.

History: En. Sec. 49, Init. Act, Nov. 1912; re-en. Sec. 10814, R.C.M. 1921; re-en. Sec. 10814, R.C.M. 1935; Sec. 94-1468, R.C.M. 1947; redes. 23-4767 by Sec. 29, Ch. 513, L. 1973; amd. Sec. 60, Ch. 365, L. 1977; R.C.M. 1947, 23-4767; amd. Sec. 229, Ch. 571, L. 1979.

Cross-References

Vacancies in state offices, Title 2, ch. 16, part 5.

Vacancies in local government offices, 7-4-2206.

Vacancy after primary and prior to general election, 13-10-327.

13-36-208. Advancement of cases — dismissal — privileges of witnesses. Proceedings under this title shall be advanced on the docket upon request of either party for speedy trial, but the court may postpone or continue the trial if necessary, and in case of such continuance or postponement, the court may impose costs in its discretion as a condition thereof. No petition may be dismissed without the consent of the county attorney unless the same is dismissed by the court. No person may be excused from testifying or producing papers or documents on the ground that his testimony or the production of papers or documents will tend to criminate him; but no admission, evidence, or paper made or advanced or produced by such person or any evidence that is the direct result of such evidence or information that he may have so given may be offered or used against him in any civil or criminal prosecution, except in a prosecution for perjury committed in such testimony.

History: En. Sec. 52, Init. Act, Nov. 1912; re-en. Sec. 10817, R.C.M. 1921; re-en. Sec. 10817, R.C.M. 1935; Sec. 94-1471, R.C.M. 1947; redes. 23-4770 by Sec. 29, Ch. 513, L. 1973; amd. Sec. 61, Ch. 365, L. 1977; R.C.M. 1947, 23-4770.

Cross-References

Self-incrimination, Art. II, sec. 25, Mont. Const.

13-36-209. Forfeiture of nomination or office for violation of law — when inappropriate. If, upon the trial of any action or proceeding under the provisions of this title to contest the right of any person to be declared nominated or elected to any office or to annul or set aside such nomination or election or to remove a person from his office, it appears from the evidence that the offense complained of was not committed by the candidate or with his knowledge or consent or was committed without his sanction or connivance and that all reasonable means for preventing the commission of such offense at such election were taken by and on behalf of the candidate; that the offense or offenses complained of were trivial, unimportant, and limited in character and that in all other respects his participation in the election was free from such offenses or illegal acts; or that any act or omission of the candidate arose from inadvertence or from accidental miscalculation or from some other reasonable cause of a like nature and in any case did not arise from any want of good faith; and under the circumstances it seems to the court to be unjust that the candidate forfeit his nomination or office or be deprived of any office of which he is the incumbent, then the nomination or election of the candidate is not by reason of such offense or omission complained of void, nor may the candidate be removed from or deprived of his office.

History: En. Sec. 38, Init. Act, Nov. 1912; re-en. Sec. 10803, R.C.M. 1921; re-en. Sec. 10803, R.C.M. 1935; Sec. 94-1457, R.C.M. 1947; redes. 23-4757 by Sec. 29, Ch. 513, L. 1973; amd. Sec. 55, Ch. 365, L. 1977; R.C.M. 1947, 23-4757.

13-36-210. Punishment. If, upon the trial of any action or proceeding under the provisions of this title to contest the right of any person to be declared to be nominated to an office or elected to an office or to annul and set aside such election or to remove any person from his office, it appears that such person was guilty of any corrupt practice, illegal act, or undue influence in or about such nomination or election, he shall be punished by being deprived of the nomination or office, as the case may be, and the vacancy therein shall be filled in the manner provided by law. The only exceptions to this judgment shall be those provided in 13-36-209. Such judgment does not prevent the candidate or officer from being proceeded against by indictment or criminal information for any such act or acts.

History: En. Sec. 39, Init. Act, Nov. 1912; re-en. Sec. 10804, R.C.M. 1921; re-en. Sec. 10804, R.C.M. 1935; Sec. 94-1458, R.C.M. 1947; redes. 23-4758 by Sec. 29, Ch. 513, L. 1973; amd. Sec. 56, Ch. 365, L. 1977; R.C.M. 1947, 23-4758.

Cross-References

Vacancies in state offices, Title 2, ch. 16, part 5.

Vacancies in local government offices, 7-4-2206.

Vacancy after primary and prior to general election, 13-10-327.

13-36-211. When nomination or election not to be vacated. Nothing in the ground of contest specified in 13-36-101(3) is to be so construed as to authorize a nomination or election to be set aside on account of illegal votes, unless it appear either:

(1) that the candidate or nominee whose right is contested had knowledge of or connived at such illegal votes; or

(2) that the number of illegal votes given to the person whose right to the nomination or office is contested, if taken from him, would reduce the number of his legal votes below the number of votes given to some other person for the same nomination or office, after deducting therefrom the illegal votes which may be shown to have been given to such other person.

History: En. Sec. 46, Init. Act, Nov. 1912; re-en. Sec. 10811, R.C.M. 1921; re-en. Sec. 10811, R.C.M. 1935; Sec. 94-1465, R.C.M. 1947; redes. 23-4764 by Sec. 29, Ch. 513, L. 1973; R.C.M. 1947, 23-4764.

13-36-212. Declaration of result of election after rejection of illegal votes. If, in any case of a contest on the ground of illegal votes, it appears that a person other than the one returned has the highest number of legal votes after the illegal votes have been eliminated, the court must declare such person nominated or elected, as the case may be.

History: En. Sec. 44, Init. Act, Nov. 1912; re-en. Sec. 10809, R.C.M. 1921; re-en. Sec. 10809, R.C.M. 1935; Sec. 94-1463, R.C.M. 1947; redes. 23-4762 by Sec. 29, Ch. 513, L. 1973; R.C.M. 1947, 23-4762.

CHAPTER 37

CONTROL OF CAMPAIGN PRACTICES

Part 1 — Commissioner of Political Practices

13-37-101. Commissioner of political practices.
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(Repealed. Sec. 8, Ch. 581, L. 1993)

Chapter Cross-References

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Role and duties of County Clerk and Recorder, 7-4-2611.

Definitions applicable to this chapter, 13-1-101.

Political contributions of insurers prohibited, 33-18-305.

Limitation on political activities of employee of Department of Fish, Wildlife, and Parks, 87-1-204.

Part 1

Commissioner of Political Practices

13-37-101. Commissioner of political practices. In this chapter, "commissioner" means the commissioner of political practices created by 13-37-102, unless the context clearly indicates otherwise.

History: En. 23-4796 by Sec. 3, Ch. 365, L. 1977; R.C.M. 1947, 23-4796; amd. Sec. 19, I.M. No. 85, approved Nov. 4, 1980.

13-37-102. Creation of office. (1) There is a commissioner of political practices who is appointed by the governor, subject to confirmation by a majority of the senate. A four-member selection committee comprised of the speaker of the house, the president of the senate, and the minority floor leaders of both houses of the legislature shall submit to the governor a list of not less than two or more than five names of individuals for his consideration. A majority of the members of the selection committee shall agree upon each nomination.

(2) The individual selected to serve as commissioner of political practices may be removed by the governor prior to the expiration of the term only for incompetence, malfeasance, or neglect of duty. The sufficiency of such causes shall be subject to judicial review.

History: En. 23-4785 by Sec. 10, Ch. 480, L. 1975; amd. Sec. 62, Ch. 365, L. 1977; amd. Sec. 1, Ch. 461, L. 1977; R.C.M. 1947, 23-4785(1), (5); amd. Sec. 1, Ch. 483, L. 1979; amd. Sec. 19, I.M. No. 85, approved Nov. 4, 1980.

Cross-References

Office of Commissioner attached to office of Secretary of State for administrative purposes, 2-15-411.

13-37-103. Term of office — limitations on holding other office. (1) The individual selected to serve as the commissioner of political practices is appointed for a 6-year term, but he is thereafter ineligible to serve as the commissioner of political practices.

(2) The individual selected to serve as commissioner of political practices is precluded from being a candidate for public office as defined in 13-1-101 for a period of 5 years from the time that he leaves office as commissioner.

History: En. 23-4785 by Sec. 10, Ch. 480, L. 1975; amd. Sec. 62, Ch. 365, L. 1977; amd. Sec. 1, Ch. 461, L. 1977; R.C.M. 1947, 23-4785(2); amd. Sec. 2, Ch. 483, L. 1979.

13-37-104. Vacancy. (1) If for any reason a vacancy occurs in the position of commissioner, a successor shall be appointed within 30 days as provided in 13-37-102(1) to serve out the unexpired term. Every nomination shall be confirmed by the senate, but a nomination made while the senate is not in session shall be effective as an appointment until the end of the next session.

(2) An individual who is selected to serve out the unexpired term of a preceding commissioner and who has served 3 years or more of an unexpired term is not eligible for reappointment.

(3) An individual who is selected to serve out the unexpired term of a preceding commissioner and who has served less than 3 years may be reappointed for a 6-year term as provided in 13-37-102(1).

History: En. 23-4785 by Sec. 10, Ch. 480, L. 1975; amd. Sec. 62, Ch. 365, L. 1977; amd. Sec. 1, Ch. 461, L. 1977; R.C.M. 1947, 23-4785(3); amd. Sec. 4, Ch. 483, L. 1979.

13-37-105. Impeachment and prosecution of commissioner. The commissioner may be removed from office by impeachment as provided in Title 5, chapter 5, part 4. He may also be prosecuted by the appropriate county attorney for official misconduct as specified in 45-7-401.

History: En. 23-4785 by Sec. 10, Ch. 480, L. 1975; amd. Sec. 62, Ch. 365, L. 1977; amd. Sec. 1, Ch. 461, L. 1977; R.C.M. 1947, 23-4785(4).

13-37-106. Salary. The commissioner of political practices is entitled to receive a salary of $30,303 in fiscal year 1992 and $31,551 in fiscal year 1993 and thereafter.

History: En. Sec. 3, Ch. 483, L. 1979; amd. Sec. 4, Ch. 605, L. 1981; amd. Sec. 3, Ch. 656, L. 1983; amd. Sec. 1, Ch. 236, L. 1985; amd. Sec. 4, Ch. 693, L. 1985; amd. Sec. 12, Ch. 660, L. 1989; amd. Sec. 14, Ch. 720, L. 1991.

13-37-107 through 13-37-110 reserved.

13-37-111. Investigative powers and duties. (1) The commissioner of political practices shall be responsible for investigating all of the alleged violations of the election laws contained in chapters 35, 36, or 37 of this title and shall in conjunction with the county attorneys be responsible for enforcing these election laws.

(2) The commissioner may investigate all statements filed pursuant to the provisions of chapters 35, 36, or 37 of this title and shall also investigate alleged failures to file any statement or the alleged falsification of any statement filed pursuant to the provisions of chapters 35, 36, or 37 of this title. Upon the submission of a written complaint by any individual, the commissioner shall also investigate any other alleged violation of the provisions of chapters 35, 36, or 37 of this title or any rule adopted pursuant thereto.

(3) The commissioner may inspect any records, accounts, or books that must be kept pursuant to the provisions of chapters 35, 36, or 37 of this title which are held by any political committee or candidate, so long as such inspection is made during reasonable office hours.

(4) The commissioner may administer oaths and affirmations, subpoena witnesses, compel their attendance, take evidence, and require the production of any books, papers, correspondence, memoranda, bank account statements of a political committee or candidate, or other records which are relevant or material for the purpose of conducting any investigation pursuant to the provisions of chapters 35, 36, or 37 of this title.

History: En. 23-4786 by Sec. 11, Ch. 480, L. 1975; amd. Sec. 63, Ch. 365, L. 1977; R.C.M. 1947, 23-4786(1), (13), (17), (21); amd. Sec. 230, Ch. 571, L. 1979.

13-37-112. Personnel and budget. (1) The commissioner shall select an appropriate staff to enforce the provisions of chapters 35, 36, or 37 of this title, and he may hire and fire all personnel under his supervision.

(2) The commissioner shall be responsible for preparing, administering, and allocating the budget for his office.

History: En. 23-4786 by Sec. 11, Ch. 480, L. 1975; amd. Sec. 63, Ch. 365, L. 1977; R.C.M. 1947, 23-4786(2), (16); amd. Sec. 231, Ch. 571, L. 1979.

Cross-References

Office of Commissioner attached to office of Secretary of State for administrative purposes, 2-15-411.

Role of Commissioner of Political Practices in regulation of lobbying, Title 5, ch. 7.

13-37-113. Hiring of attorneys — prosecutions. The commissioner may hire or retain attorneys who are properly licensed to practice before the supreme court of the state of Montana to prosecute violations of chapters 35, 36, or 37 of this title. Any properly licensed attorney so retained or hired shall exercise the powers of a special attorney general, and he may prosecute, subject to the control and supervision of the commissioner and the provisions of 13-37-124 and 13-37-125, any criminal or civil action arising out of a violation of any provision of chapters 35, 36, or 37 of this title. All prosecutions shall be brought in the state district court for the county in which a violation has occurred or in the district court for Lewis and Clark County. The authority to prosecute as prescribed by this section includes the authority to:

(1) institute proceedings for the arrest of persons charged with or reasonably suspected of criminal violations of chapters 35, 36, or 37 of this title;

(2) attend and give advice to a grand jury when cases involving criminal violations of chapters 35, 36, or 37 of this title are presented;

(3) draw and file indictments, informations, and criminal complaints;

(4) prosecute all actions for the recovery of debts, fines, penalties, or forfeitures accruing to the state or county from persons convicted of violating chapters 35, 36, or 37 of this title; and

(5) do any other act necessary to successfully prosecute a violation of any provision of chapters 35, 36, or 37 of this title.

History: En. 23-4786 by Sec. 11, Ch. 480, L. 1975; amd. Sec. 63, Ch. 365, L. 1977; R.C.M. 1947, 23-4786(3); amd. Sec. 232, Ch. 571, L. 1979.

Cross-References

Consultation with County Attorney, 13-37-124.

Powers of County Attorney to investigate, 13-37-125.

13-37-114. Rules. The commissioner shall promulgate and publish rules to carry out the provisions of chapters 35, 36, or 37 of this title and shall promulgate such rules in conformance with the Montana Administrative Procedure Act.

History: En. 23-4786 by Sec. 11, Ch. 480, L. 1975; amd. Sec. 63, Ch. 365, L. 1977; R.C.M. 1947, 23-4786(14); amd. Sec. 233, Ch. 571, L. 1979.

Cross-References

Montana Administrative Procedure Act, Title 2, ch. 4.

13-37-115. Orders of noncompliance. The commissioner may issue orders of noncompliance as prescribed by 13-37-121.

History: En. 23-4786 by Sec. 11, Ch. 480, L. 1975; amd. Sec. 63, Ch. 365, L. 1977; R.C.M. 1947, 23-4786(18).

13-37-116. Exercise of powers. The commissioner may exercise all of the powers conferred upon him by law in any jurisdiction or political subdivision of the state.

History: En. 23-4786 by Sec. 11, Ch. 480, L. 1975; amd. Sec. 63, Ch. 365, L. 1977; R.C.M. 1947, 23-4786(19).

13-37-117. Commissioner to provide forms, manuals, and election laws. (1) The commissioner shall prescribe forms for reports and other information required to be filed pursuant to chapter 35, 36, or 37 of this title and furnish forms and appropriate information to persons required to file reports and other information.

(2) The commissioner shall prepare and publish a manual prescribing a uniform system for accounts for use by persons required to file reports pursuant to chapter 35, 36, or 37 of this title.

(3) The commissioner shall, at the expense of the state, furnish copies of the election laws relating to penalties, campaign practices, campaign finances, and contested elections to candidates and to any other persons required to file reports or other information pursuant to chapter 35, 36, or 37 of this title.

History: En. 23-4786 by Sec. 11, Ch. 480, L. 1975; amd. Sec. 63, Ch. 365, L. 1977; R.C.M. 1947, 23-4786(4), (5), (7); amd. Sec. 234, Ch. 571, L. 1979; amd. Sec. 2, Ch. 113, L. 1993.

13-37-118. Information voluntarily supplied. The commissioner shall accept and file any information voluntarily supplied that exceeds the requirements of chapters 35, 36, or 37 of this title.

History: En. 23-4786 by Sec. 11, Ch. 480, L. 1975; amd. Sec. 63, Ch. 365, L. 1977; R.C.M. 1947, 23-4786(6); amd. Sec. 235, Ch. 571, L. 1979.

13-37-119. Availability of information. (1) The commissioner shall make statements and other information filed with his office available for public inspection and copying during regular office hours and make copying facilities available free of charge or at a charge not to exceed actual cost.

(2) The commissioner shall preserve statements and other information filed with his office for a period of 10 years from date of receipt.

(3) The commissioner shall prepare and publish summaries of the statements received and such other reports as he considers appropriate.

(4) The commissioner shall provide for wide public dissemination of summaries and reports.

History: (1) thru (4)En. 23-4786 by Sec. 11, Ch. 480, L. 1975; amd. Sec. 63, Ch. 365, L. 1977; Sec. 23-4786, R.C.M. 1947; (Former (5))En. 23-4789 by Sec. 14, Ch. 480, L. 1975; Sec. 23-4789, R.C.M. 1947; R.C.M. 1947, 23-4786(8) through (12), 23-4789; amd. Sec. 236, Ch. 571, L. 1979.

13-37-120. Reports. The commissioner may report as necessary on the matters within the commissioner's jurisdiction that the legislature may prescribe and shall also make recommendations for further legislation that may appear desirable.

History: En. 23-4786 by Sec. 11, Ch. 480, L. 1975; amd. Sec. 63, Ch. 365, L. 1977; R.C.M. 1947, 23-4786(15), (20); amd. Sec. 237, Ch. 571, L. 1979; amd. Sec. 17, Ch. 349, L. 1993.

13-37-121. Inspection of statements and reports — issuance of orders of noncompliance. (1) Each statement and report filed with the commissioner during an election or within 60 days after the election must be inspected within 10 days after the statement or report is filed. If a person has not satisfied the provisions of this chapter, the commissioner shall immediately notify the person of the noncompliance. If the person fails to comply after the notification, the commissioner shall issue an order of noncompliance as provided in this section.

(2) An order of noncompliance may be issued when:

(a) upon examination of the official ballot, it appears that the person has failed to file a statement or report as required by this chapter or that a statement or report filed by a person does not conform to law; or

(b) it is determined that a statement or report filed with the commissioner does not conform to the requirements of this chapter or that a person has failed to file a statement or report required by law.

(3) If an order of noncompliance is issued during a campaign period or within 60 days after an election, a candidate or political committee shall submit the necessary information within 5 days after receiving the order of noncompliance. Upon a failure to submit the required information within the time specified, the appropriate county attorney or the commissioner may initiate a civil or criminal action pursuant to the procedures outlined in 13-37-124 and 13-37-125.

(4) If an order of noncompliance is issued during any period other than that described in subsection (3), a candidate or political committee shall submit the necessary information within 10 days after receiving the order of noncompliance. Upon a failure to submit the required information within the time specified, the appropriate county attorney or the commissioner shall initiate a civil or criminal action pursuant to the procedures outlined in 13-37-124 and 13-37-125.

History: En. 23-4787 by Sec. 12, Ch. 480, L. 1975; amd. Sec. 64, Ch. 365, L. 1977; R.C.M. 1947, 23-4787(1) thru (3); amd. Sec. 238, Ch. 571, L. 1979; amd. Sec. 1, Ch. 410, L. 1995.

Compiler's Comments

1995 Amendment: Chapter 410 at end of (1) inserted "If the person fails to comply after the notification, the commissioner shall issue an order of noncompliance as provided in this section"; in (2) substituted "may" for "shall"; in (3) and (4), near end of first sentence, substituted "order" for "notice"; adjusted subsection references; and made minor changes in style.

Cross-References

Authority to issue order of noncompliance, 13-37-115.

13-37-122. Judicial review of orders of noncompliance. A candidate or political treasurer aggrieved by the issuance of an order of noncompliance may seek judicial review in the district court of the county in which the candidate resides or the county in which the political committee has its headquarters. All petitions for judicial review filed pursuant to this section shall be expeditiously reviewed by the appropriate district court.

History: En. 23-4787 by Sec. 12, Ch. 480, L. 1975; amd. Sec. 64, Ch. 365, L. 1977; R.C.M. 1947, 23-4787(4).

13-37-123. Examination of reports after election. Within 120 days after the date of each election, the commissioner shall examine and compare each statement or report filed with the commissioner pursuant to the provisions of this chapter to determine whether the statement or report conforms to the provisions of the law. The examination shall include a comparison of all reports and statements received by the commissioner pursuant to the requirements of this chapter. The commissioner may investigate the source and authenticity of any contribution or expenditure listed in any report or statement filed pursuant to this chapter or the alleged failure to report any contribution or expenditure required to be reported pursuant to this chapter.

History: En. 23-4787 by Sec. 12, Ch. 480, L. 1975; amd. Sec. 64, Ch. 365, L. 1977; R.C.M. 1947, 23-4787(5); amd. Sec. 239, Ch. 571, L. 1979.

13-37-124. Consultation and cooperation with county attorney. (1) Whenever the commissioner determines that there appears to be sufficient evidence to justify a civil or criminal prosecution under chapters 35, 36, or 37 of this title, he shall notify the county attorney of the county in which the alleged violation occurred and shall arrange to transmit to the county attorney all information relevant to the alleged violation. If the county attorney fails to initiate the appropriate civil or criminal action within 30 days after he receives notification of the alleged violation, the commissioner may then initiate the appropriate legal action.

(2) A county attorney may, at any time prior to the expiration of the 30-day time period specified in subsection (1), waive his right to prosecute and thereby authorize the commissioner to initiate the appropriate civil or criminal action.

(3) The provisions of subsection (1) do not apply to a situation in which the alleged violation has been committed by the county attorney of a county. In this instance, the commissioner is authorized to directly prosecute any alleged violation of chapters 35, 36, or 37 of this title.

(4) If a prosecution is undertaken by the commissioner, all court costs associated with the prosecution shall be paid by the state of Montana, and all fines and forfeitures imposed pursuant to a prosecution by the commissioner, except those paid to or imposed by a justice's court, shall be deposited in the state general fund.

History: En. 23-4788 by Sec. 13, Ch. 480, L. 1975; amd. Sec. 46, Ch. 334, L. 1977; amd. Sec. 65, Ch. 365, L. 1977; R.C.M. 1947, 23-4788(1) thru (4); amd. Sec. 240, Ch. 571, L. 1979; amd. Sec. 7, Ch. 557, L. 1987.

Cross-References

Collection and disposition of fines, penalties, forfeitures, and fees, 3-10-601.

13-37-125. Powers of county attorney to investigate. (1) Nothing in chapters 35, 36, or 37 of this title prevents a county attorney from inspecting any records, accounts, or books which must be kept pursuant to the provisions of chapters 35, 36, or 37 of this title that are held by a political committee or candidate involved in an election to be held within the county. However, the inspections must be conducted during reasonable office hours.

(2) A county attorney may:

(a) administer oaths and affirmations;

(b) subpoena witnesses and compel their attendance;

(c) take evidence; and

(d) require the production of any books, correspondence, memoranda, bank account statements of a political committee or candidate, or other records which are relevant or material for the purpose of conducting any investigation pursuant to the provisions of chapters 35, 36, or 37 of this title.

History: En. 23-4788 by Sec. 13, Ch. 480, L. 1975; amd. Sec. 46, Ch. 334, L. 1977; amd. Sec. 65, Ch. 365, L. 1977; R.C.M. 1947, 23-4788(5), (6); amd. Sec. 241, Ch. 571, L. 1979.

13-37-126. Names not to be printed on ballot. (1) The name of a candidate may not be printed on the official ballot for an election if the candidate or a political treasurer for a candidate fails to file any statement or report as required by this chapter.

(2) A vacancy on an official ballot under this section may be filled in the manner provided by law, but not by the name of the same candidate.

(3) In carrying out the mandate of this section, the commissioner must, by a written statement, notify the secretary of state or the election administrator that a candidate or a candidate's treasurer has not complied with the provisions of this chapter, as described in subsection (1), and that a candidate's name should not be printed on the official ballot.

History: En. 23-4791 by Sec. 16, Ch. 480, L. 1975; R.C.M. 1947, 23-4791; amd. Sec. 242, Ch. 571, L. 1979.

Cross-References

Vacancy prior to primary election, 13-10-326.

Vacancy after primary and prior to general election, 13-10-327.

13-37-127. Withholding of certificates of nomination or election. (1) A certificate of election shall not be granted to any candidate until he or his political treasurer has filed the reports and statements that must be filed pursuant to the provisions of this chapter. No candidate for an elective office may assume the powers and duties of that office until he has received a certificate of election as provided by law. A certificate of election shall only be issued by the public official responsible for issuing a certificate or commission of election.

(2) In carrying out the mandate of this section, the commissioner must, by written statement, notify the public official responsible for issuing a certificate of nomination or election that a candidate or his treasurer has complied with the provisions of this chapter as described in subsection (1) and that a certificate of nomination or election may be issued.

History: En. 23-4792 by Sec. 17, Ch. 480, L. 1975; R.C.M. 1947, 23-4792; amd. Sec. 243, Ch. 571, L. 1979.

Cross-References

Certificates issued by Election Administrator, 13-15-406.

Governor to issue commissions, 13-15-504.

13-37-128. Cause of action created. (1) Except as provided in 13-37-306, any person who intentionally or negligently violates any of the reporting provisions of this chapter, shall be liable in a civil action brought by the commissioner or a county attorney pursuant to the provisions outlined in 13-37-124 and 13-37-125 for an amount up to $500 or three times the amount of the unlawful contributions or expenditures, whichever is greater.

(2) Any person who makes or receives a contribution or expenditure in violation of 13-35-225, 13-35-227, 13-35-228, or this chapter, is liable in a civil action brought by the commissioner or a county attorney pursuant to the provisions outlined in 13-37-124 and 13-37-125 for an amount up to $500 or

three times the amount of the unlawful contribution or expenditure, whichever is greater.

History: **En. Sec. 244, Ch. 571, L. 1979.**

13-37-129. Liability and disposition of fines. In determining the amount of liability under 13-37-128, the court may take into account the seriousness of a violation and the degree of culpability of the defendant. If a judgment is entered against the defendant or defendants in an action brought by a county attorney in a court other than a justice's court, the county shall receive 50% of the amount recovered. The remaining 50% shall be deposited in the general fund of the state. In an action brought by the commissioner in a court other than a justice's court, the entire amount recovered shall be paid to the general fund of the state.

History: **En. Sec. 245, Ch. 571, L. 1979; amd. Sec. 8, Ch. 557, L. 1987.**

Cross-References

Collection and disposition of fines, penalties, forfeitures, and fees, 3-10-601.

13-37-130. Limitation of action. No action may be brought under 13-37-128 and 13-37-129 more than 4 years after the occurrence of the facts which give rise to the action. No more than one judgment against a particular defendant may be had on a single state of facts. The civil action created in 13-37-128 and 13-37-129 shall be the exclusive remedy for violation of the contribution, expenditure, and reporting provisions of this chapter, except as provided in 13-37-306. These provisions are not subject to the misdemeanor penalties of 13-35-103 but may be a ground for contest of election or removal from office as provided in 13-35-106(3) and Title 13, chapter 36.

History: **En. Sec. 246, Ch. 571, L. 1979.**

13-37-131. Misrepresentation of voting record — political civil libel. (1) It is unlawful for a person to willfully or negligently make or publish a false statement about a candidate's public voting record or to make or publish a false statement that reflects unfavorably upon a candidate's character or morality.

(2) It is unlawful for a person to willfully or negligently provide false information to a candidate concerning another candidate's public voting record when the person knows or should know that the information will be made public during the course of a campaign.

(3) For the purposes of this section, the public voting record of a candidate who was previously a member of the legislature includes a vote of that candidate recorded in committee minutes or in journals of the senate or the house of representatives. Failure of a person to verify a public voting record is evidence of the person's willful or negligent conduct if the statement made by the person or the information provided to the candidate is false.

(4) A person violating subsection (1) or (2) is liable in a civil action brought by the commissioner or county attorney pursuant to 13-37-124 for an amount up to $1,000. An action pursuant to this section is subject to the provisions of 13-37-129 and 13-37-130.

History: **En. Sec. 1, Ch. 483, L. 1995.**

Part 2
Campaign Finance

Part Cross-References

Civil penalties for violation of chapter, 13-37-128.

13-37-201. Campaign treasurer. Except as provided in 13-37-206, each candidate and each political committee shall appoint one campaign treasurer and certify the full name and complete address of the campaign treasurer pursuant to this section. A candidate shall file the certification within 5 days after becoming a candidate. A political committee shall file the certification, which shall include an organizational statement and set forth the name and address of all other officers, if any, within 5 days after it makes an expenditure or authorizes another person to make an expenditure on its behalf, whichever occurs first. The certification of a candidate or political committee shall be filed with the commissioner and the appropriate election administrator as specified for the filing of reports in 13-37-225.

History: En. 23-4781 by Sec. 6, Ch. 480, L. 1975; amd. Sec. 2, Ch. 23, L. 1977; R.C.M. 1947, 23-4781(1); amd. Sec. 247, Ch. 571, L. 1979; amd. Sec. 23, Ch. 591, L. 1991.

Cross-References

Naming and labeling of political committees, 13-37-210.

13-37-202. Deputy campaign treasurers. (1) A campaign treasurer may appoint deputy campaign treasurers, but not more than one in each county in which the campaign is conducted. Each candidate and political committee shall certify the full name and complete address of the campaign treasurer and all deputy campaign treasurers with the office with whom the candidate or the political committee is required to file reports.

(2) Deputy campaign treasurers may exercise any of the powers and duties of a campaign treasurer as set forth in this chapter when specifically authorized in writing to do so by the campaign treasurer and the candidate, in the case of a candidate, or the campaign treasurer and the chairman of the political committee, in the case of a political committee. The written authorization shall be maintained as a part of the records required to be kept by the treasurer, as specified in 13-37-208.

History: En. 23-4781 by Sec. 6, Ch. 480, L. 1975; amd. Sec. 2, Ch. 23, L. 1977; R.C.M. 1947, 23-4781(2), (4); amd. Sec. 248, Ch. 571, L. 1979.

Cross-References

Definition of "candidate" and "political committee", 13-1-101.

13-37-203. Qualifications of campaign and deputy campaign treasurers. Any campaign or deputy campaign treasurer appointed pursuant to 13-37-201 and 13-37-202 shall be a registered voter in this state. An individual may be appointed and serve as a campaign treasurer of a candidate and a political committee or two or more candidates and political committees. A candidate may appoint himself as his own campaign or deputy campaign treasurer. No individual may serve as a campaign or deputy campaign treasurer or perform any duty required of a campaign or deputy campaign treasurer of a candidate or political committee until he has been designated and his name certified by the candidate or political committee.

History: En. 23-4781 by Sec. 6, Ch. 480, L. 1975; amd. Sec. 2, Ch. 23, L. 1977; R.C.M. 1947, 23-4781(3).

Cross-References

Registered voter, Title 13, ch. 2.

13-37-204. Removal of campaign and deputy campaign treasurers. A candidate or political committee may remove his or its campaign or deputy campaign treasurer. The removal of any treasurer or deputy treasurer shall immediately be reported to the officer with whom the name of the campaign treasurer was originally filed. In case of death, resignation, or removal of his or its campaign treasurer before compliance with any obligation of a campaign treasurer under this chapter, the candidate or political committee shall appoint a successor and certify the name and address of the successor as specified in 13-37-201.

History: En. 23-4781 by Sec. 6, Ch. 480, L. 1975; amd. Sec. 2, Ch. 23, L. 1977; R.C.M. 1947, 23-4781(5).

13-37-205. Campaign depositories. Except as provided in 13-37-206, each candidate and each political committee shall designate one primary campaign depository for the purpose of depositing all contributions received and disbursing all expenditures made by the candidate or political committee. The candidate or political committee may also designate one secondary depository in each county in which an election is held and in which the candidate or committee participates. Deputy campaign treasurers may make deposits in and expenditures from secondary depositories when authorized to do so as provided in 13-37-202(2). Only a bank, credit union, savings and loan association, or building and loan association authorized to transact business in Montana may be designated as a campaign depository. The candidate or political committee shall file the name and address of each primary and secondary depository so designated at the same time and with the same officer with whom the candidate or committee files the name of his or its campaign treasurer pursuant to 13-37-201. Nothing in this section shall prevent a political committee or candidate from having more than one campaign account in the same depository, but a candidate may not utilize his regular or personal account in the depository as a campaign account.

History: En. 23-4781 by Sec. 6, Ch. 480, L. 1975; amd. Sec. 2, Ch. 23, L. 1977; R.C.M. 1947, 23-4781(6); amd. Sec. 249, Ch. 571, L. 1979; amd. Sec. 1, Ch. 98, L. 1981.

13-37-206. Exception for certain school districts and certain special districts. (1) The provisions of this part, except 13-37-217, do not apply to candidates for the office of trustee of a school district, their political committees, and political committees organized to support or oppose a school district issue when the school district is:

(a) a first-class district located in a county having a population of less than 15,000;

(b) a second- or third-class district; or

(c) a county high school district having a student enrollment of less than 2,000.

(2) The provisions of this part, except 13-37-217, do not apply to candidates for certain special district offices, their political committees, and political

committees organized to support or oppose a special district issue when the special district is a conservation district, a fire district, a hospital district, an irrigation district, a sewer district, a transportation district, or a water district.

History: En. 23-4781 by Sec. 6, Ch. 480, L. 1975; amd. Sec. 2, Ch. 23, L. 1977; R.C.M. 1947, 23-4781(7); amd. Sec. 250, Ch. 571, L. 1979; amd. Sec. 1, Ch. 361, L. 1991.

13-37-207. Deposit of contributions — statement of campaign treasurer. (1) All funds received by the campaign treasurer or any deputy campaign treasurer of any candidate or political committee shall be deposited prior to the end of the fifth business day following their receipt (Sundays and holidays excluded) in a checking account, share draft account, share checking account, or negotiable order of withdrawal account in a campaign depository designated pursuant to 13-37-205.

(2) A statement showing the amount received from or provided by each person and the account in which the funds are deposited shall be prepared by the campaign treasurer at the time the deposit is made. This statement along with the receipt form for cash contributions deposited at the same time and a deposit slip for the deposit shall be kept by the treasurer as a part of his records.

History: En. 23-4782 by Sec. 7, Ch. 480, L. 1975; R.C.M. 1947, 23-4782; amd. Sec. 2, Ch. 98, L. 1981.

13-37-208. Treasurer to keep records. (1) The campaign treasurer of each candidate and each political committee shall keep detailed accounts (current within not more than 10 days after the date of receiving a contribution or making an expenditure, except that accounts shall be current as of the 5th day before the date of filing of a report as specified in 13-37-226) of all contributions received and all expenditures made by or on behalf of the candidate or political committee that are required to be set forth in a report filed under this chapter.

(2) Accounts of a deputy campaign treasurer shall be transferred to the treasurer of a candidate or political committee before the candidate or political committee finally closes its books or when the position of a deputy campaign treasurer becomes vacant and no successor is appointed.

(3) Accounts kept by a campaign treasurer of a candidate or political committee shall be preserved by the campaign treasurer for a period coinciding with the term of office for which the person was a candidate or for a period of 4 years, whichever is longer.

History: En. 23-4783 by Sec. 8, Ch. 480, L. 1975; R.C.M. 1947, 23-4783(1), (3); amd. Sec 251, Ch. 571, L. 1979.

13-37-209. Inspection of records. Accounts kept by the campaign treasurer of a candidate or political committee may be inspected under reasonable circumstances before, during, or after the election to which the accounts refer by the campaign treasurer of any opposing candidate or political committee in the same electoral district. The right of inspection may be enforced by appropriate writ issued by any court of competent jurisdiction. The campaign treasurers of political committees supporting a candidate may be joined with the campaign treasurer of the candidate as respondents in such a proceeding.

History: En. 23-4783 by Sec. 8, Ch. 480, L. 1975; R.C.M. 1947, 23-4783(2).

13-37-210. Naming and labeling of political committees. (1) Any political committee filing a certification and organizational statement pursuant to 13-37-201 shall:

(a) name and identify itself in its organizational statement using a name or phrase:

(i) that clearly identifies the economic or other special interest, if identifiable, of a majority of its contributors; and

(ii) if a majority of its contributors share a common employer, that identifies the employer; and

(b) label any media advertisement or other paid public statement it makes or causes to be made in support of or opposition to any candidate or ballot measure by printing or broadcasting its name, as provided under subsection (1)(a), and position in support of or opposition to the candidate or ballot measure as a part of the media advertisement or other paid public statement.

(2) The naming and labeling requirements in subsection (1) are reporting requirements for purposes of enforcement under 13-37-128.

History: En. Sec. 1, Ch. 225, L. 1985.

13-37-211 through 13-37-214 reserved.

13-37-215. Petty cash funds allowed. (1) The campaign treasurer for each candidate or political committee is authorized to withdraw the following amount each week from the primary depository for the purpose of providing a petty cash fund for the candidate or political committee:

(a) for all statewide candidates and political committees filing reports pursuant to 13-37-226(1), $100 per week; and

(b) for all other candidates and political committees, $25 per week.

(2) The petty cash fund may be spent for office supplies, transportation expenses, postage stamps, and other necessities in an amount of less than $25. Petty cash shall not be used for the purchase of time, space, or services from any communications medium.

History: En. 23-4784 by Sec. 9, Ch. 480, L. 1975; R.C.M. 1947, 23-4784; amd. Sec. 252, Ch. 571, L. 1979; amd. Sec. 1, Ch. 21, L. 1987.

13-37-216. Limitations on contributions. (1) (a) Aggregate contributions for each election in a campaign by a political committee or by an individual, other than the candidate, to a candidate are limited as follows:

(i) for candidates filed jointly for the office of governor and lieutenant governor, not to exceed $400;

(ii) for a candidate to be elected for state office in a statewide election, other than the candidates for governor and lieutenant governor, not to exceed $200;

(iii) for a candidate for any other public office, not to exceed $100.

(b) A contribution to a candidate includes contributions made to the candidate's committee and to any political committee organized on the candidate's behalf.

(2) (a) A political committee that is not independent of the candidate is considered to be organized on the candidate's behalf. For the purposes of this section, an independent committee means a committee which is not specifically organized on behalf of a particular candidate or which is not controlled either directly or indirectly by a candidate or candidate's committee and which does

not act jointly with a candidate or candidate's committee in conjunction with the making of expenditures or accepting contributions.

(b) A leadership political committee maintained by a political officeholder is considered to be organized on the political officeholder's behalf.

(3) All political committees except those of political party organizations are subject to the provisions of subsections (1) and (2). For purposes of this subsection, "political party organization" means any political organization that was represented on the official ballot at the most recent gubernatorial election. Political party organizations may form political committees that are subject to the following aggregate limitations from all political party committees:

(a) for candidates filed jointly for the offices of governor and lieutenant governor, not to exceed $15,000;

(b) for a candidate to be elected for state office in a statewide election, other than the candidates for governor and lieutenant governor, not to exceed $5,000;

(c) for a candidate for public service commissioner, not to exceed $2,000;

(d) for a candidate for the state senate, not to exceed $800;

(e) for a candidate for any other public office, not to exceed $500.

(4) A candidate may not accept any contributions in excess of the limits in this section.

(5) For purposes of this section, "election" means the general election or a primary election that involves two or more candidates for the same nomination. If there is not a contested primary, there is only one election to which the contribution limits apply. If there is a contested primary, then there are two elections to which the contribution limits apply.

History: En. 23-4795 by Sec. 1, Ch. 481, L. 1975; amd. Sec. 67, Ch. 365, L. 1977; R.C.M. 1947, 23-4795; amd. Sec. 253, Ch. 571, L. 1979; amd. Sec. 1, I.M. No. 118, approved Nov. 8, 1994.

Cross-References

Definition of "contribution", 13-1-101.

Corporations prohibited from making contributions, 13-35-227.

Limitations on receipts from political committees, 13-37-218.

13-37-217. Contributions in name of undisclosed principal. No person may make a contribution of his own money or of another person's money to any other person in connection with any election in any other name than that of the person who in truth supplies such money. No person may knowingly receive such a contribution or enter or cause the same to be entered in his accounts or records in another name than that of the person by whom it was actually furnished.

History: En. Sec. 18, Init. Act, Nov. 1912; re-en. Sec. 10783, R.C.M. 1921; re-en. Sec. 10783, R.C.M. 1935; Sec. 94-1437, R.C.M. 1947; redes. 23-4737 by Sec. 29, Ch. 513, L. 1973; amd. Sec. 54, Ch. 365, L. 1977; R.C.M. 1947, 23-4737; amd. Sec. 254, Ch. 571, L. 1979.

Cross-References

Corporations prohibited from making contributions, 13-35-227.

13-37-218. Limitations on receipts from political committees. A candidate for the state senate may receive no more than $1,000 in total combined monetary contributions from all political committees contributing to his campaign, and a candidate for the state house of representatives may receive no more than $600 in total combined monetary contributions from all political committees contributing to his campaign. The foregoing limitations shall be multiplied by the inflation factor as defined in 15-30-101(8) for the year in which general elections are held after 1984; the resulting figure shall be rounded off to the nearest $50 increment. The commissioner of political practices shall publish the revised limitations as a rule. In-kind contributions must be included in computing these limitation totals. The limitation provided in this section does not apply to contributions made by a political party eligible for a primary election under 13-10-601.

History: En. Sec. 1, Ch. 529, L. 1983; amd. Sec. 19, Ch. 634, L. 1993; amd. Sec. 2, I.M. No. 118, approved Nov. 8, 1994.

Cross-References

Definition of "contributions", 13-1-101.

Limitations on contributions, 13-27-216.

Corporations prohibited from making contributions, 13-35-227.

13-37-219 through 13-37-224 reserved.

13-37-225. Reports of contributions and expenditures required. (1) Except as provided in 13-37-206, each candidate and political committee shall file periodic reports of contributions and expenditures made by or on the behalf of a candidate or political committee. All reports required by this chapter shall be filed with the commissioner and with the election administrator of the county in which a candidate is a resident or the political committee has its headquarters. However, where residency within a district, county, city, or town is not a prerequisite for being a candidate, copies of all reports shall be filed with the election administrator of the county in which the election is to be held or, if the election is to be held in more than one county, with the election administrator in the county that the commissioner specifies.

(2) In lieu of all contribution and expenditure reports required by this chapter, the commissioner shall accept copies of the reports filed by candidates for congress and president of the United States and their political committees pursuant to the requirements of federal law.

History: En. 23-4778 by Sec. 3, Ch. 480, L. 1975; amd. Sec. 1, Ch. 23, L. 1977; R.C.M. 1947, 23-4778(1), (2); amd. Sec. 255, Ch. 571, L. 1979; amd. Sec. 24, Ch. 591, L. 1991.

Cross-References

Rules of conduct for public officers, legislators, and employees, 2-2-104.

Elected officials — financial disclosure statements, 2-2-106.

Definition of "contribution" and "expenditure", 13-1-101.

13-37-226. Time for filing reports. (1) Candidates for a state office filled by a statewide vote of all the electors of Montana and political committees that are organized to support or oppose a particular statewide candidate shall file reports:

(a) quarterly, due on the fifth day following a calendar quarter, beginning with the calendar quarter in which funds are received or expended during the year or years prior to the election year that the candidate expects to be on the ballot;

(b) on the 10th day of March and September in each year that an election is to be held and on the 15th and 5th days preceding the date on which an election is held and within 24 hours after receiving a contribution of $500 or more if received between the 10th day before the election and the day of the election;

(c) not more than 20 days after the date of the election; and

(d) on the 10th day of March and September of each year following an election until the candidate or political committee files a closing report as specified in 13-37-228(3).

(2) Political committees organized to support or oppose a particular statewide ballot issue shall file reports:

(a) quarterly, due on the fifth day following a calendar quarter, beginning with the calendar quarter in which funds are received or expended during the year or years prior to the election year that an issue subject to a referendum is or is expected to be on the ballot;

(b) on the 10th day of March and on the 10th day of each subsequent month through September;

(c) on the 15th and 5th days preceding the date on which an election is held;

(d) within 24 hours after receiving a contribution of $500 or more if received between the 10th day before the election and the day of the election;

(e) within 20 days after the election; and

(f) on the 10th day of March and September of each year following an election until the political committee files a closing report as specified in 13-37-228(3).

(3) Candidates for a state district office, including but not limited to candidates for the legislature, the public service commission, or a district court judge, and political committees that are specifically organized to support or oppose a particular state district candidate or issue shall file reports:

(a) on the 12th day preceding the date on which an election is held and within 48 hours after receiving a contribution of $100 or more if received between the 17th day before the election and the day of the election. The report under this subsection (3)(a) may be made by mail or by electronic communication to the clerk and recorder and the commissioner of political practices.

(b) not more than 20 days after the date of the election; and

(c) whenever a candidate or political committee files a closing report as specified in 13-37-228(3).

(4) Candidates for any other public office and political committees that are specifically organized to support or oppose a particular local issue shall file the reports specified in subsection (3) only if the total amount of contributions received or the total amount of funds expended for all elections in a campaign, excluding the filing fee paid by the candidate, exceeds $500, except as provided in 13-37-206.

(5) For the purposes of this subsection, a committee that is not specifically organized to support or oppose a particular candidate or ballot issue and that receives contributions and makes expenditures in conjunction with an election is an independent committee. For the purpose of reporting, a political party committee is an independent committee. An independent committee shall file:

(a) a report on the 12th day preceding the date of an election in which it participates by making an expenditure;

(b) a report not more than 20 days after the date of the election in which it participates by making an expenditure; and

(c) a report on a date to be prescribed by the commissioner for a closing report at the close of each calendar year.

(6) The commissioner may promulgate rules regarding the extent to which organizations that are not primary political committees but are incidental political committees shall report their politically related activities in accordance with this chapter.

(7) All reports required by this section must be complete as of the fifth day before the date of filing as specified in 13-37-228(2) and this section.

History: En. 23-4778 by Sec. 3, Ch. 480, L. 1975; amd. Sec. 1, Ch. 23, L. 1977; R.C.M. 1947, 23-4778(3) thru (6); amd. Sec. 256, Ch. 571, L. 1979; amd. Sec. 2, Ch. 339, L. 1989; amd. Sec. 1, Ch. 75, L. 1991; amd. Sec. 20, Ch. 10, L. 1993; amd. Sec. 1, Ch. 208, L. 1993; amd. Sec. 9, Ch. 18, L. 1995; amd. Sec. 1, Ch. 86, L. 1995.

Compiler's Comments

1995 Amendments — Composite Section: Chapter 18 near end of (7) substituted reference to 13-37-228(2) for reference to 13-37-225(2); and made minor changes in style.

Chapter 86 in (3)(a) extended reporting time to 48 hours from 24 hours and inserted second sentence authorizing the report to be made by mail or by electronic communication; and made minor changes in style.

In (5)(c), at beginning, the Code Commissioner inserted "a report" for consistency of style.

Cross-References

Times for holding general elections, 13-1-104.

Times for holding primary elections, 13-1-107.

13-37-227. Comprehensive report when several candidates or issues involved. The commissioner shall adopt rules that will permit political committees, including political parties, to file copies of a single comprehensive report when they support or oppose more than one candidate or issue. The commissioner shall adopt rules under which committees filing periodic reports with the federal election commission and committees headquartered outside the state of Montana shall report in accordance with this title.

History: En. 23-4778 by Sec. 3, Ch. 480, L. 1975; amd. Sec. 1, Ch. 23, L. 1977; R.C.M. 1947, 23-4778(7); amd. Sec. 257, Ch. 571, L. 1979.

13-37-228. Time periods covered by reports. Reports filed under 13-37-225 and 13-37-226 shall be filed to cover the following time periods even though no contributions or expenditures may have been received or made during the period:

(1) The initial report shall cover all contributions received or expenditures made by a candidate or political committee prior to the time that a person became a candidate or a political committee as defined in 13-1-101 until the fifth day before the date of filing of the appropriate initial report pursuant to subsections (1) through (5) of 13-37-226.

(2) Subsequent periodic reports shall cover the period of time from the closing of the previous report to 5 days before the date of filing of a report pursuant to 13-37-226(1) through (5).

(3) Closing reports shall cover the period of time from the last periodic report to the final closing of the books of the candidate or political committee. A candidate or political committee shall file a closing report following an election in which he or it participates whenever all debts and obligations are extinguished and no further contributions or expenditures will be received or made which relate to the campaign, unless the election is a primary election and the candidate or political committee will participate in the general election.

History: En. 23-4778 by Sec. 3, Ch. 480, L. 1975; amd. Sec. 1, Ch. 23, L. 1977; R.C.M. 1947, 23-4778(8); amd. Sec. 258, Ch. 571, L. 1979; amd. Sec. 2, Ch. 75, L. 1991.

13-37-229. Disclosure of contributions received. Each report required by this chapter shall disclose the following information:

(1) the amount of cash on hand at the beginning of the reporting period;

(2) the full name, mailing address, occupation, and employer, if any, of each person who has made aggregate contributions, other than loans, of $35 or more to a candidate or political committee (including the purchase of tickets and other items for events, such as dinners, luncheons, rallies, and similar fundraising events);

(3) for each person identified under subsection (2), the aggregate amount of contributions made by that person within the reporting period and the total amount of contributions made by that person for all reporting periods;

(4) the total sum of individual contributions made to or for a political committee or candidate and not reported under subsections (2) and (3) of this section;

(5) the name and address of each political committee or candidate from which the reporting committee or candidate received any transfer of funds, together with the amount and dates of all transfers;

(6) each loan from any person during the reporting period, together with the full names, mailing addresses, occupations, and employers, if any, of the lender and endorsers, if any, and the date and amount of each loan;

(7) the amount and nature of debts and obligations owed to a political committee or candidate, in the form prescribed by the commissioner;

(8) an itemized account of proceeds that total less than $35 from a person from mass collections made at fundraising events;

(9) each contribution, rebate, refund, or other receipt not otherwise listed under subsections (2) through (8) of this section during the reporting period;

(10) the total sum of all receipts received by or for the committee or candidate during the reporting period; and

(11) other information that may be required by the commissioner to fully disclose the sources of funds used to support or oppose candidates or issues.

History: En. 23-4779 by Sec. 4, Ch. 480, L. 1975; R.C.M. 1947, 23-4779(1) through (9), (part (16)); amd. Sec. 1, Ch. 36, L. 1987; amd. Sec. 3, Ch. 75, L. 1991.

13-37-230. Disclosure of expenditures made. Each report required by this chapter shall disclose the following information, except that a candidate shall only be required to report the information specified in this section if the transactions involved were undertaken for the purpose of influencing an election:

(1) the full name and mailing address (occupation and the principal place of business, if any) of each person to whom expenditures have been made by the committee or candidate during the reporting period, including the amount, date, and purpose of each expenditure and the total amount of expenditures made to each person;

(2) the full name and mailing addresses (occupation and the principal place of business, if any) of each person to whom an expenditure for personal services, salaries, and reimbursed expenses have been made, including the amount, date, and purpose of that expenditure and the total amount of expenditures made to each person;

(3) the total sum of expenditures made by a political committee or candidate during the reporting period;

(4) the name and address of each political committee or candidate to which the reporting committee or candidate made any transfer of funds, together with the amount and dates of all transfers;

(5) the name of any person to whom a loan was made during the reporting period, including the full name and mailing address (occupation and principal place of business, if any) of that person, and the full name and mailing address (occupation and principal place of business, if any) of the endorsers, if any, and the date and amount of each loan;

(6) the amount and nature of debts and obligations owed by a political committee or candidate in the form prescribed by the commissioner;

(7) other information that may be required by the commissioner to fully disclose the disposition of funds used to support or oppose candidates or issues.

History: En. 23-4779 by Sec. 4, Ch. 480, L. 1975; R.C.M. 1947, 23-4779(10) through (16).

13-37-231. Reports to be certified as true and correct. (1) A report required by this chapter to be filed by a candidate or political committee shall be verified as true and correct by the oath or affirmation of the individual filing the report. The individual filing the report shall be the candidate or an officer of a political committee who is on file as an officer of the committee with the commissioner.

(2) A copy of a report or statement filed by a candidate or political committee shall be preserved by the individual filing it for a period coinciding with the term of office for which the person was a candidate or for a period of 4 years, whichever is longer.

History: En. 23-4780 by Sec. 5, Ch. 480, L. 1975; R.C.M. 1947, 23-4780; amd. Sec. 260, Ch. 571, L. 1979.

Cross-References

Oaths and affirmations, Title 1, ch. 6.

13-37-232 through 13-37-239 reserved.

13-37-240. Surplus campaign funds. (1) A candidate shall dispose of any surplus funds from the candidate's campaign within 120 days after the time of filing the closing campaign report pursuant to 13-37-228. In disposing of the surplus funds, a candidate may not contribute the funds to another campaign, including the candidate's own future campaign, or use the funds for personal benefit. The candidate shall provide a supplement to the closing campaign report to the commissioner showing the disposition of any surplus campaign funds.

(2) For purposes of this section, "personal benefit" means a use that will provide a direct or indirect benefit of any kind to the candidate or any member of the candidate's immediate family.

History: En. Sec. 3, I.M. No. 118, approved Nov. 8, 1994.

Part 3

Public Campaign Finance (Repealed. Sec. 8, Ch. 581, L. 1993)

Part Compiler's Comments

Histories of Repealed Sections:

13-37-301. En. 23-4901 by Sec. 1, Ch. 263, L. 1974; amd. Sec. 1, Ch. 538, L. 1977; R.C.M. 1947, 23-4901.

13-37-302. En. 23-4902 by Sec. 2, Ch. 263, L. 1974; amd. Sec. 2, Ch. 538, L. 1977; R.C.M. 1947, 23-4902; amd. Sec. 1, Ch. 579, L. 1979.

13-37-303. En. 23-4903 by Sec. 3, Ch. 263, L. 1974; R.C.M. 1947, 23-4903; amd. Sec. 2, Ch. 579, L. 1979; amd. Sec. 34, Ch. 370, L. 1987.

13-37-304. En. 23-4904 by Sec. 4, Ch. 263, L. 1974; amd. Sec. 3, Ch. 538, L. 1977; R.C.M. 1947, 23-4904; amd. Sec. 3, Ch. 579, L. 1979; amd. Sec. 1, Ch. 277, L. 1983; amd. Sec. 9, Ch. 703, L. 1985; amd. Sec. 2, Ch. 361, L. 1991.

13-37-305. En. 23-4905 by Sec. 5, Ch. 263, L. 1974; R.C.M. 1947, 23-4905; amd. Sec. 3, Ch. 361, L. 1991.

13-37-306. En. 23-4906 by Sec. 6, Ch. 263, L. 1974; amd. Sec. 4, Ch. 538, L. 1977; R.C.M. 1947, 23-4906.

13-37-307. En. Sec. 5, Ch. 579, L. 1979.

13-37-308. En. Sec. 4, Ch. 579, L. 1979.

CHAPTER 38

POLITICAL PARTIES

Part 1 — General Provisions

13-38-101. Powers of parties.
13-38-102. Repealed.
13-38-103. Department of justice to submit new-voter lists to major political parties.
13-38-104. Party rules to be filed with secretary of state.
13-38-105. County committee rules to be filed with election administrator.

Part 2 — Committee Structure

13-38-201. Election of committeemen at primary.
13-38-202. Committeemen as party representatives — county and city central committees.
13-38-203. Powers of county and city central committees — role of state central committee where no county central committee exists.
13-38-204. Committees to fill vacancies among nominees under certain circumstances.
13-38-205. Organization and operation of committee.

Chapter Cross-References

Definitions applicable to this chapter, 13-1-101.

Nominations by political parties, Title 13, ch. 10, parts 4 through 6.

Unlawful for political parties to endorse judicial candidate, 13-35-231.

Part 1

General Provisions

13-38-101. Powers of parties. Each political party shall have power to:

(1) make its own rules;

(2) provide for and select its own offices;

(3) call conventions and provide for the number and qualification of delegates;

(4) adopt platforms;

(5) provide for selection of delegates to national conventions;

(6) provide for the nomination of presidential electors;

(7) provide for the selection of national committeemen and women;

(8) make nominations to fill vacancies occurring among its candidates nominated for offices to be filled by the state at large or by any district consisting of more than one county where such vacancies are caused by death, resignation, or removal from the electoral district;

(9) perform all other functions inherent in such an organization.

History: En. Sec. 81, Ch. 368, L. 1969; R.C.M. 1947, 23-3406.

Cross-References

Vacancy after primary and prior to general election, 13-10-327.

Presidential electors, 13-25-101.

13-38-102. Repealed. Sec. 1, Ch. 513, L. 1981.

History: En. Sec. 83, Ch. 368, L. 1969; R.C.M. 1947, 23-3407.

13-38-103. Department of justice to submit new-voter lists to major political parties. No later than January 31 in any year in which a general election is held, the department of justice shall submit to the chairman of each major political party of the state four copies of a list prepared from its driver license registration files, showing names and addresses of all persons, compiled on a county by county basis, who have reached voting age since the last general election and those who will reach voting age before the date of the general election. No official of the department shall be responsible for any honest error or omission in preparing the lists.

History: En. Sec. 17, Ch. 368, L. 1969; amd. Sec. 1, Ch. 257, L. 1971; amd. Sec. 1, Ch. 132, L. 1973; R.C.M. 1947, 23-3001.

Cross-References

Exemptions from prohibition against distribution of lists, 2-6-109.

13-38-104. Party rules to be filed with secretary of state. The state central committee of each political party in this state must file a current copy of the rules of government of the party with the secretary of state.

History: En. Sec. 261, Ch. 571, L. 1979.

13-38-105. County committee rules to be filed with election administrator. The county committee of each political party of this state must file a current copy of its rules of government with the election administrator.

History: En. Sec. 262, Ch. 571, L. 1979.

Cross-References

County Clerk and Recorder as Election Administrator, 13-1-301.

Part 2
Committee Structure

13-38-201. Election of committeemen at primary. (1) Each political party shall elect at each primary election one man and one woman who shall serve as committeemen for each election precinct. The committeemen shall be residents and registered voters of the precinct.

(2) An elector may be placed in nomination for committeeman by a writing so stating, signed by the elector, notarized, and filed in the office of the registrar

within the time for filing declarations naming candidates for nomination at the regular biennial primary election.

(3) The names of candidates for precinct committeeman of each political party shall be printed on the party ticket in the same manner as other candidates and the voter shall vote for them in the same manner as he does for other candidates.

History: En. Sec. 72, Ch. 368, L. 1969; R.C.M. 1947, 23-3401.

Cross-References

Rules for determining residence in general, 1-1-215.

Definition of "registrar", 13-1-101.

Registered voter, Title 13, ch. 2.

Declaration of nomination, 13-10-201.

13-38-202. Committeemen as party representatives — county and city central committees. (1) Each committeeman shall represent his political party for the precinct in all ward or subdivision committees formed.

(2) The committeemen in each precinct shall constitute the county central committee of the respective political parties.

(3) Committeemen who reside within the limits of a city are ex officio the city central committee of their respective political parties and have the power to make their own rules not inconsistent with those of the county central committee. However, the county central committee has the power to fill vacancies in the city central committee.

(4) Each precinct committeeman has a term of 2 years from the date of his election.

(5) If a vacancy occurs, the remaining members of the county committee may select a precinct resident to fill the vacancy.

History: En. Sec. 73, Ch. 368, L. 1969; R.C.M. 1947, 23-3402.

13-38-203. Powers of county and city central committees — role of state central committee where no county central committee exists. (1) The county and city central committee may:

(a) make rules for the government of its political party in each county not inconsistent with any of the provisions of the election laws of this state or the rules of its state political party;

(b) elect two county members of the state central committee, one of whom shall be a man and one of whom shall be a woman, elect the members of the congressional committee, and fill all vacancies and make rules in their jurisdiction.

(2) If there is no county central committee, the state central committee shall appoint a county central committee.

History: En. Sec. 74, Ch. 368, L. 1969; amd. Sec. 25, Ch. 365, L. 1977; R.C.M. 1947, 23-3403.

13-38-204. Committees to fill vacancies among nominees under certain circumstances. County and city central committees may make nominations to fill vacancies occurring among the candidates of their respective parties nominated for city or county offices by the primary election if the vacancy is caused by death, resignation, or removal from the electoral district but not otherwise.

History: En. Sec. 75, Ch. 368, L. 1969; R.C.M. 1947, 23-3404.

Cross-References

Filling of vacancy in Legislature, 5-2-403.

Filling vacancy in office of State Senator, 5-2-406.

Filling vacancy on Board of County Commissioners, 7-4-2106.

Filling vacancy in county office, 7-4-2206.

13-38-205. Organization and operation of committee. (1) The committee shall meet prior to the state convention of its political party and organize by electing a chairman and one or more vice-chairmen. The chairman or first vice-chairman shall be a woman. The committee shall elect a secretary and other officers as are proper. It is not necessary for the officers to be precinct committeemen.

(2) The committee may select managing or executive committees and authorize subcommittees to exercise all powers conferred upon the county, city, state, and congressional central committees by the election laws of this state.

(3) The chairman of the county central committee shall call the central committee meeting and not less than 4 days before the date of the central committee meeting shall publish the call in a newspaper published at the county seat and mail a copy of the call to each precinct committeeman. If party rules permit the use of a proxy, no proxy may be recognized unless held by an elector of the precinct of the committeeman executing it.

(4) The county chairman of the party shall preside at the county convention. No person other than a duly elected or appointed committeeman or officer of the committee is entitled to participate in the proceedings of the committee.

(5) If a committeeman is absent, the convention may fill the vacancy by appointing some qualified elector of the party, resident in the precinct, to represent the precinct in the convention.

(6) The county convention shall elect delegates and alternate delegates to the state convention under rules of the state party. The chairman and secretary of the county convention shall issue and sign certificates of election of the delegates.

History: En. Sec. 76, Ch. 368, L. 1969; amd. Sec. 1, Ch. 216, L. 1973; amd. Sec. 26, Ch. 365, L. 1977; R.C.M. 1947, 23-3405.

TITLE 14

RESERVED

Filling vacancy on Board of County Commissioners, 7-4-2106. Filling vacancy in county office, 7-4-2206.

DOES NOT CIRCULATE

13-38-205. Organization and operation of committee. (1) The committee shall meet prior to the county convention of its political party and organize by electing a chairman and a vice-chairman. The chairman or the vice-chairman shall be a woman. The committee shall elect a secretary and other officers as are proper. It is not necessary for the officers to be precinct committeemen.

(2) The committee may select an executive committee and may authorize subcommittees to exercise all powers conferred upon the county, state, and congressional central committees by the election laws of this state.

(3) The chairman of the county central committee shall call the county committee meeting and not less than 4 days before the date of the county committee meeting shall publish the call in a newspaper published at the county seat and mail a copy of the call to each precinct committeeman. If party rules permit the use of a proxy, no proxy may be recognized unless held by an elector of the precinct of the committeeman executing it.

(4) The county chairman of the party shall preside at the county convention. No person other than a duly elected or appointed committeeman or officer of the committee is entitled to participate in the proceedings of the committee.

(5) If a committeeman is absent, the convention may fill the vacancy by appointing some qualified elector of the party, resident in the precinct, to represent the precinct in the convention.

(6) The county convention shall elect delegates and alternate delegates to the state convention under rules of the state party. The chairman and secretary of the county convention shall issue and sign certificates of election of the delegates.

History: En. Sec. 78, Ch. 368, L. 1969; amd. Sec. 1, Ch. 216, L. 1973; amd. Sec. 28, Ch. 365, L. 1977; R.C.M. 1947, 23-3405.